

Select Reports of Cases determined
In the Court of Foujdaree Adalat
of Madras.


Librarian

Uttarpara Joykrishna Public Library
Govt. of West Bengal

XXXIII. Regulation IX. of 1816, might appear insufficient, or to which the rules laid down in those Sections might not be expressly applicable, and for which a more severe punishment than six months' imprisonment with 30 stripes of a rattan or a fine of Rupees 200 might not have been expressly prescribed, by a sentence of imprisonment, not exceeding six months, with corporal punishment, not exceeding thirty rattans, in cases of theft, or in other cases with a fine, not exceeding 200 Rupees, commutable, in default of payment, to a further period of imprisonment, not exceeding six months.

In all other cases, if the evidence appeared sufficient for conviction, the Criminal Judge was required to commit the accused to prison, or hold him to bail (according as the offence charged might be bailable or not) to take his trial at the next Sessions of the Court of Circuit.

To each Criminal Judge an Assistant was appointed, to whom it was competent to him to depute the execution of such portion of the duties of the Court as he might think proper.

In the same year a general system of Police was established throughout the territories subject to the Government of Fort Saint George, and the duties previously performed by Police Darogahs and Tanahdars were transferred to the Heads of Villages, Tahsildars, Zemindars, Ameens of Police, Cutwalls, Magistrates, and their Assistants; the Heads of Villages being aided in the discharge of their duties by the Village Accountants and Village Watchers, and the other Police Officers by the Peons on their respective establishments; rules were laid down for the guidance of the Native Heads of Police, who were required to aid the Village authorities in the apprehension of offenders, to investigate all complaints of offences, preferred to them, and to commit persons accused of heinous offences direct to the Criminal Court; certain inconsiderable powers being vested in them of disposing of trivial offences, which have been extended by subsequent enactments to the infliction of ten days' imprisonment with labour, in cases of petty theft; when the value of the property stolen may not exceed five Rupees; and to the imposition of a fine, not exceeding three Rupees, for other offences of a trivial nature.

In 1818 the Court of Foujdaree Udalut were empowered to overrule Futwas of acquittal, delivered by their Mahomedan Law Officers, in

Regulation I. of 1818.

Section II.

cases in which two or more Judges of the Court might consider the evidence sufficient for conviction ; and the law was amended in cases of rape and adultery, the former of which offences, in all cases in which the evidence might be considered sufficient for conviction, was declared to be referrible for the sentence of the Foujdaree Udalt.

• The next alterations of importance in the Criminal Law were introduced in 1822, when the Criminal Judges and Magistrates were vested

Regulation II. of 1822. with the power of placing persons under requisitions of security ; the former in the case of accused persons tried before them, to whom strong suspicion, though insufficient for conviction, might be considered to attach ; and the latter in the case of vagrants or suspicious persons, in re-

Section III. gard to whom the Magistracy were invested with a discrecional authority of either placing them under a requisition of security for their appearance, or of committing them to gaol without requiring security, if they

Section IV. should think fit ; provisions were at the same time enacted for the punishment of offences relating to the coin, and the penal jurisdiction of the Criminal Courts was extended

Regulation VI. of 1822. to cases of house breaking, and of receiving stolen property, and to the disposal of cases of theft of a more serious nature than those before adjudicable by them ;

Clause Sixth, Section II. and these offences, if unattended with certain
Clause Fourth, Section III. circumstances of aggravation, which were laid
Clause Fourth, Section IV. down, they were authorized to punish with im-

prisonment with hard labor up to two years, and with corporal punishment not exceeding thirty stripes of a rattan. Cases of escape un-

attended with aggravating circumstances by convicts under sentence of temporary imprisonment, by prisoners confined on requisition of secu-

Clauses Second and Third, Section V. rity, or by prisoners under examination, were likewise made cognizable by the Criminal Courts ; as well as cases of malversation in Revenue affairs or of bribery of Revenue Officers ; aggravated cases of this nature being committable to the Courts of Circuit.

Regulation I. of 1822. By another Regulation, passed in the same year, it was enacted that all cases of robbery by open violence, in which the prisoners were convicted by the Courts of Circuit, should be referred for the final sentence of the Court of Foujdaree Udalt.

Regulation I. of 1825. This latter enactment was rescinded in 1825 ; the reference to the Court of Foujdaree Udalut of all cases of conviction of that offence having been found greatly to increase the labors of the Courts of Circuit without any commensurate benefit ; and the power of passing a final sentence of 14 years' imprisonment with hard labour in cases of robbery by open violence, unattended with aggravating circumstances, was restored to the Courts of Circuit ; who were further authorized in such cases to adjudge corporal punishment of thirty-nine stripes with a rattan ; a similar power being vested in the Court of Foujdaree Udalut in the cases of persons sentenced by them to imprisonment and transportation for life.

Section II.

A discretionary authority was at the same time granted to the Court of Foujdaree Udalut to mitigate the prescribed punishment in those cases in which the Courts of Circuit were bound

Section III. by the Regulations to pass a stated sentence, upon the recommendation of the Judge of Circuit, accompanied by a report of the circumstances of the case and of the sentence proposed by him to be passed, and likewise to mitigate or remit the punishment pronounced in the Futwas of their Mahomedan Law

Section VI. Officers, in cases in which that law does not allow a discretionary punishment, when considered unnecessarily severe. And further provisions were enacted for the removal of the technical

Section VIII. objections in the Futwas of the Mahomedan Law Officers to the evidence of witnesses ; which were subsequently extended by Regulation VI. of 1829, whereby the Courts of Circuit were entirely relieved from the necessity of referring cases for the final sentence of the Foujdaree Udalut, on the ground of personal exceptions having been taken by the Mahomedan Law Officers to the evidence of prosecutors or witnesses.

Regulation III. of 1826. In 1826 further provisions were enacted for the punishment of the crimes of perjury and of ubornation of per jury.

Regulation II. of 1827. In 1827 Auxiliary Courts were established, to aid in the administration of justice in those Zillahs in which, from the pressure of business before the Zillah Courts, or from other causes, the establishments of such Courts appeared desirable ; portions of the Zillahs in which they were established were transferred to their separate jurisdiction, and the Officers appointed to preside over them were designated in their criminal capacity as Joint Criminal Judges, and were authorized to exercise, within the limits assign-

ed to their local jurisdiction, the full power and authority of Criminal Judges.

Regulation III. of 1827. In the same year the Governor in Council was empowered in certain cases to direct that persons charged with crimes and misdemeanors should be sent for trial, if committed, to another Court than that within the jurisdiction of which the offences charged were committed; further provisions were enacted for the punishment of the offence of counterfeiting

Regulation VI. of 1827. the coin; Magistrates were authorized to take personal recognizances to keep the peace, and to require security from vagrants and other suspicious characters for their good behaviour, as well as for their appearance when required; the rules for the requisition of security by Magistrates, Criminal Judges, Courts of Circuit, and the Court of Foujdaree Udalt were more accurately defined; the office of

Regulation VII. of 1827. Native Criminal Judge was established, with a jurisdiction in most respects concurrent with that exercised by the Criminal Courts; and an Act was passed for the gradual introduction of trial by Jury.

Regulation X. of 1827. The aiding and abetting in the performance of Suttce was made punishable in 1830.

Regulation I. of 1830. In 1831 single Judges of the Court of Foujdaree Udalt were vested in certain cases with the powers previously exercised by two or more Judges of that Court; and in 1833 Sudr Ameens were empowered to decide Criminal cases referred to them by the Criminal, Joint Criminal, and Native Criminal Judges; it being provided that no cases committable for trial to the Circuit Courts should be cognizable by them, and that all judgments passed by them in their capacity of Criminal Judges should be subject to revision by the Criminal Judge.

No further alteration took place in the constitution of the Courts until 1843, when the judicial system under this Presidency was entirely remodelled; the Courts of Circuit being then abolished, and their duties transferred to Session Judges, and other changes effected in the constitution and jurisdiction of the Courts, which will presently be adverted to.

In the mean time however improvements and additions to the criminal law were from time to time introduced, of which the more important were the enactments for the punishment of the crimes of trea-

Regulation I. of 1834.	son and rebellion, for the suppression of the crime of thuggee, for vesting in the Collectors of Ganjam and Vizagapatam, under the designation of Agent to the Governor of Fort St. George, in certain tracts of country, certain judicial powers, and for dispensing with a Futwa from the Mahomedan Law Officers of the Court of Foujdaree Udalt, in cases referred to it for final sentence.
Act XXX. of 1836.	
Act XXIV. of 1839.	
Act I. of 1840.	

For some years previous to the introduction of the changes, which were effected in the Judicial system in 1843, the excessive delay in the administration of justice in those cases which fell within the jurisdiction of the Courts of Circuit, had attracted the attention of Government and the Court of Directors. In a report on the subject from the Court of Foujdaree Udalt in 1834 it was shown that, on an average of the three years 1831, 32, 33, in the cases committed for trial before the several Courts of Circuit, the interval between the apprehension and trial of the prisoners was 133 days, and that in the cases tried by those Courts, and referred for the sentence of the Foujdaree Udalt the interval between apprehension and sentence averaged 266 days. From a subsequent letter of the Register of the Foujdaree Udalt, dated the 1st May 1840, it appeared that the average interval between apprehension and trial in the cases referred to that Court from 1833 to 1839, was 164 days, and between apprehension and sentence 274; the average interval between apprehension and trial during the last three years of that period being 137; and the Judges of the Foujdaree Udalt stated that, so long as the gaols were delivered only once in six months, it could not be much reduced.

As a partial remedy of the evil adverted to, an Act, to which reference has already been made, was passed in 1840, empowering the Court of Foujdaree Udalt to dispense with Futwas from their Law Officers in disposing of cases referred for their final sentence; and this enactment has been found on experience to have been attended with a most satisfactory result; the average delay in disposing of trials after the receipt of the record, which, before the Act was passed, was 27 days, having now been diminished to 5 days.

This remedy however was but partial; and the only course which appeared, on consideration, calculated to obviate the delays experienced in the trial of cases cognizable by the Courts of Circuit, consisted in the total abolition of those Courts, and the establishment in their stead of local judicatories, to which the judicial functions of the Courts of Cir-

cuit should be transferred, one of which should be stationed in each District, and should hold permanent Sessions for the trial of all cases formerly cognizable by the Courts of Circuit.

The Provincial Courts of Appeal and Circuit were accordingly abolished, and twenty new Zillah Courts were constituted in their stead; each presided over by one Judge under the designation of Civil and Session Judge of the Zillah; and the former Civil and Criminal Zillah Courts were replaced by twenty Subordinate Civil and Criminal Courts established in each District, to which in the criminal department the duties previously performed by the Criminal Courts, Joint Criminal Courts, and Native Criminal, or, as they were latterly designated, Principal Sudr Ameen's Courts, were transferred.

At nine of the stations, at which the new Subordinate Criminal Courts were established, those Courts were placed under an European Subordinate Judge; while at the remaining eleven stations it was arranged that the Subordinate Courts should be presided over by Principal Sudr Ameens; the jurisdiction of both classes of functionaries being precisely the same as that formerly vested in the Criminal and Joint Criminal Courts, and their duties identical; with the exception that, in cases cognizable by the Courts of Session, if it appeared from the depositions recorded by the Police, that there was evidence of the prisoner having been concerned in the perpetration of the offence charged, Section XXIX. Act VII. of 1843. and the deponents confirmed their previous depositions before the Subordinate Criminal Judge, that functionary was authorized without any further investigation to commit the case.

To each Session Court a Mahomedan Law Officer was attached, to aid the Session Judge in the trial of criminal cases, in the same manner, and subject to the same regulations as were previously applicable to the Law Officers of the Courts of Circuit; the Session Judges being authorized at their discretion to dispense with the aid of their Mahomedan Law Officers, and to avail themselves of the assistance of two or more respectable persons, as assessors, or as jurors; and specific rules being laid down for the course to be adopted in trials conducted under the discretionary power thus conferred.

The authority of the Court of Foujdaree Udalut in the revision of the sentences of the lower Courts was augmented, and the powers of single Judges of that Court were considerably extended; it being

made competent to them, on a revision of the proceedings held in any criminal trial by any Court of inferior jurisdiction, singly to reverse or alter the sentence passed, provided such reversal or alteration be in favor of the accused; while to the collective Court the power was granted, upon a mere review of the abstract statements of persons punished without reference by the lower Courts, to mitigate the sentence passed, when it might appear to them to be illegal or too severe; and in cases, in which the sentence might appear to be in opposition to any law or Regulation in force, to require the Session Judge to pass a new sentence according to law.

The power of mitigating sentences on a mere review of the abstract statements has however since been removed from the Court of Foujdaree Udalt by Act XIV. of 1848.

It was arranged that in certain Zillahs the functions elsewhere vested in the Subordinate Criminal Courts should be entrusted to the Session Judge, in addition to his proper duties; and in four of the Courts of this Presidency this double jurisdiction is exercised by the Session Judge, to whom all criminal cases, cognizable by the Courts, are committed direct by the Magistracy and Police.

The judicial powers of the Magistrates were likewise extended, and they were authorized to exercise the powers vested in Criminal Judges by Section VII. Regulation X. of 1816, concurrently with the Subordinate Criminal Courts; and the exercise by Sudr Ameens of the Criminal functions with which they had previously been invested was continued, the duty of revising their sentences being transferred from the Criminal Judges to the Judges of the Session Courts.

Such were the principal alterations introduced into the criminal department of the judicial system of this Presidency in 1843; and the periodical reports on the administration of criminal justice since that period bear ample testimony to the success which has attended many of the changes then effected; especially in the avoidance of the delays experienced under the system previously in force.

Under the existing Law the administration of justice is distributed among the several functionaries appointed to dispense it, in the following manner.

Petty offences of a trivial nature, and petty thefts, when the amount of property stolen does not exceed a rupee, are punishable by the Heads

of Villages by imprisonment in the Village Choultry, not exceeding 12 hours, or confinement in the stocks, not exceeding six hours.

* To the * Heads of District Police and Police† Ameens is assigned the punishment of similar offences by fine, not exceeding 3 Rupees, commutable to imprisonment for 3 days without labour, and in cases of theft, when the amount of property stolen does not exceed 5 Rupees, by imprisonment with labour, not exceeding ten days.

Magistrates, Joint Magistrates, and Assistant Magistrates of a District are invested with the power of punishing petty offences; such as abusive language, calumny, inconsiderable assaults and affrays, false complaints, and petty cases of extortion by Officers of Customs, by imprisonment for a period not exceeding fifteen days, or by fine to the extent of Rupees 50, except in the cases of Zemindars and other proprietors of land of a certain value, in which cases the fine awardable may be extended to Rupees 200.

Petty thefts and petty cases of injury to cattle are punishable by the Magistracy by corporal punishment, not exceeding 90 lashes with a cat-o-nine tails, or imprisonment for a term not longer than one month.

Under the extended powers vested in them by Section LIV. Act VII. of 1843, the Magistracy are likewise authorized to dispose of cases of offences against the person or property, punishable by the Mahomedan Law or the Regulations, for which the penalties prescribed in Sections XXXII. and XXXIII., Regulation IX. of 1816 may appear insufficient, or to which the rules laid down in those Sections may not be expressly applicable, and for which a more severe punishment than six months' imprisonment with 150 lashes with a cat-o-nine tails or a fine of Rupees 200 may not have been expressly prescribed, by a sentence of imprisonment, not exceeding six months, with corporal punishment, not exceeding 150 lashes, in cases of theft, or in other cases with a fine not exceeding 200 Rupees, commutable, in default of payment, to a further period of imprisonment not exceeding six months.

In addition to those above referred to, there are other offences of a special nature, for the punishment of which the Magistracy are invested with special powers; and under this head may be classed frauds in weights and measures, the manufacture or exportation of arms or storing of gunpowder without a license, unlawful assemblies, neglect by proprietors of land or by Native Revenue Officers or Heads of Vil-

* The Officer in charge of the Police of a Talook, or Division of a District.

† The Officer in charge of the Police of a Town.

lages to report intended cases of suttee, wearing an illegal badge, illegally contracting with emigrants, creating public nuisances, obstructions, &c., offences against the post office, engaging in lotteries, offences against the abkaree laws, and breaches of the salt laws and tobacco laws.

The Magistracy* are authorized to cause the apprehension of vagrants and other suspicious characters, and either to place them under requisitions of security for a period not exceeding twelve months, and in default to commit them to gaol for a similar period, or, without requiring security, to commit them to gaol for a term not exceeding twelve months.

From persons of dangerous character, whose release without security at the expiration of the period of twelve months may be considered hazardous to the community, it is competent to the Magistracy to require security for such a period and in such an amount as they may think fit, and, in the event of their failing to produce it, to refer the case to the Session Judge, who, on consideration of the proceedings, if he concur with the committing Officer, may order the confinement of such persons for an indefinite period; it being however provided that every prisoner so confined be brought before the Session Judge at the expiration of every three years, in order to the reconsideration of his case, and to its being decided whether he shall be remanded or released.

It is likewise competent to the Magistracy to bind parties in their personal recognizances with a view to the prevention of breaches of the peace.

All† orders and sentences passed by the Magistracy are required to be recorded and are appealable to the Session Judge.

All cases, of which the Magistracy are not empowered to take final cognizance, are to be committed for trial to the Subordinate Criminal Courts, which, in addition to the concurrent jurisdiction with the Magistracy with which they are invested for the punishment of offences

* It has been ruled by the Court of Foujdaree Udalut that in cases cognizable by the Magistracy under the extended powers vested in them by Section LIV., Act VII. of 1843, it is competent to those Officers, upon strong suspicion, not amounting to proof, of the concernment of the accused in the specific offence charged, to place him under a requisition of security for a period not exceeding six months. Vide C. O. of the Foujdaree Udalut, No. 173.

† Magistrates are prohibited by Government from delegating to their Junior Assistants the decision of cases of importance, until they have been employed in the transaction of public business under the immediate superintendence of an European Officer of experience for one year.

against the person and property, are authorized to award, in cases of theft, of house-breaking, and receiving stolen property, where the offence may not have been attended with certain aggravations, (which are specified), imprisonment with hard labor up to the period of two years and 150 lashes with the cat-o-nine tails.

The Criminal Courts are vested with special powers for the punishment of the following offences—the sale of military stores, injury to cattle, melting or disguising ornaments, forcible occupation of land, maltreatment of prisoners and witnesses, and other abuse of authority by Police Officers, false complaints before Police Officers, and offences against the abkaree laws, the salt laws, the tobacco laws, and the custom laws.

In addition to the cases already referred to, which, to render them cognizable by the Subordinate Criminal Courts, must be, after due investigation, committed by Officers of the Magistracy or Police, those Courts are empowered to take primary cognizance of cases of culpable neglect or connivance of peons in permitting prisoners under their charge to escape from custody, of stealing or injuring records, of perjury, or forgery or subornation thereof, sent to them for committal by the functionaries before whom it may have been committed, of perjury or forgery or subornation thereof falling under their own judicial view, of cases of malversation in Revenue affairs brought forward by a Collector, of escape from custody by convicts, or prisoners under requisition of security, or by prisoners under examination, and of misconduct on the part of prisoners in goal.

Of the above mentioned offences, those of connivance on the part of peons in permitting the escape of prisoners, of stealing or injuring official records, of perjury or forgery or subornation thereof, aggravated cases of malversation in Revenue affairs, and cases of escape, accompanied by circumstances of aggravation, are committable to the Session Courts.

In all cases, in which the evidence, though insufficient for the full conviction of the accused, may be considered to attach to him strong suspicion, the Subordinate Criminal Judge (or Principal Sudr Ameen) is authorized to place him under a requisition of security in any reasonable sum for any period not exceeding one year, which, in the case of persons of dangerous character, may be extended under the rules already specified in the statement of the powers of the Magistracy in dealing with persons of this class.

All orders and sentences passed by the Subordinate Criminal Courts are appealable to the Session Judge, to whom abstract statements of the cases disposed of by the Subordinate Criminal Courts within their

respective jurisdictions are monthly submitted for revision and eventual transmission to the Court of Foujdaree Udalt.

The constitution of the Session Courts has been already described. Their powers of punishment extend to fourteen years' imprisonment with hard labour in irons and corporal punishment not exceeding 196 lashes, in cases of robbery by open violence and in cases of theft, house-breaking, and receiving stolen property, where the commission of the offence may have been attended with personal violence to a degree not endangering life. In all cases of gang-robbery by open violence, the Session Courts are required, on conviction, to pass sentence of fourteen years' imprisonment, with, or without, corporal punishment according to their discretion; it being competent to them to apply for the sanction of the Court of Foujdaree Udalt to mitigate the prescribed punishment in those cases in which they may consider it to be too severe.

A similar rule exists in regard to cases of theft and house-breaking punishable by the Courts of Session; seven years' imprisonment with hard labour in irons being the punishment prescribed, except in those cases in which the commission of the offence may have been attended with considerable violence, in which cases the Session Courts are empowered to award such period of imprisonment as they may think proper, up to fourteen years.

The distinction is somewhat anomalous; the Session Courts being thus invested with a discretion of passing a more lenient sentence in cases of an aggravated nature, than, in cases of a less aggravated character, it is competent to them to award.*

* It may be observed on reference to the report of the case of "Vengannah and two others" reported at page 22A that the correctness of the construction put by the Court of Foujdaree Udalt upon the provisions of Section II. Regulation VI. of 1822 has been questioned by the late Session Judge of Cuddapah in the return made by him in the said case. The Session Judge contended that Clauses Fourth and Fifth of the Section above quoted relieved the Courts from the necessity of resorting to the provisions of Section XXI. Regulation VII. of 1802 for the punishment of simple cases of burglary and theft, under which enactment the Circuit (Session) Courts could pass no other sentence than seven years' imprisonment. He argued that it could not have been intended by the legislature that, while in cases of burglary or theft accompanied by severe wounding the Courts were vested with a discretionary power of passing any sentence they might think fit, short of fourteen years' imprisonment, in simple cases unattended by the circumstance of aggravation referred to they should be compelled to adjudge a period of imprisonment not less than seven years; and he contended that the context of Clauses Second and Fourth, Section II. Regulation VI. of 1822 showed that a discretionary power of punishment within fixed limits was given to a Session Judge in all cases of house-breaking and theft in which he is authorized to pass sentence. Clause Fifth he interpreted not to forbid a Session Judge from passing sentence under

For the offences of perjury, forgery, and subornation thereof, the Courts of Session are required to pass a sentence of imprisonment for not less than four and not more than seven years; it being open to them to apply to the Court of Foudaree Udalut for mitigation in those cases in which they may consider the prescribed penalties to be too severe; while for the offence of stealing or injuring judicial records, imprisonment for any period not exceeding seven years with lashes with a cat-o-nine tails not exceeding 100; for riotous assemblies or threatening Government or the Officers of Government with the view of altering any law, or rendering its provisions nugatory, imprisonment for a period not less than three years and not more than ten; for tobacco smuggling and for malversation in the tobacco department, imprisonment for any period not exceeding three years; (those cases of tobacco smuggling, in which the commission of the offence may have been aggravated by any circumstance of violence, being declared punishable under the provisions for the punishment of the offence of robbery by open violence;) for aiding and abetting in the performance of suttee* fine or imprisonment, or both; for offences against the post office, imprisonment for a term not exceeding seven years, and a fine; for offences against the printing act, a fine to an amount not exceeding Rupees 5,000, and imprisonment for a period not exceeding two years; for obstructing a Customs Officer in the discharge of his duty, imprisonment not exceeding six months, or a fine not exceeding Rupees 1,000, or both; and for the unauthorized collection of customs, or frauds committed by Customs Officers upon the Customs Revenue, imprisonment not exceeding two years or fine, or both, are awardable by the Session Courts.

For all other offences which may not have been expressly provided for by the Regulations, but are punishable by the Mahomedan Law, the

that Regulation in a case of house-breaking without corporal injury, but merely to enact that in passing sentence under the preceding Clause such penalties as might be in force for burglary or theft should not be enhanced in cases where there was no wounding or corporal injury.

The Session Judge's arguments appear to be sound, and they would probably have led to a re-consideration of the construction previously laid down by the Court of Foudaree Udalut, had it not been then anticipated that the new Penal Code would be speedily promulgated, which deterred the Court from interfering with a practice of long continuance, and liable to no more serious objection than that it occasions unnecessary references to the Higher Court.

* Using violence or compulsion, or assisting in burning or burying alive a Hindu widow while labouring under a state of intoxication, or other cause impeding the exercise of her free will, is punishable by the Court of Foudaree Udalut with death.

Courts of Session are empowered to pass a sentence of imprisonment for any term not exceeding seven years, and corporal punishment to the extent of 195 lashes with a cat-o-nine tails.

Under these provisions of the law most cases of extensive fraud, the crimes of abduction, procuring abortion, aggravated cases of abuse of authority by Native Police Officers, serious affrays, aiding in the escape of, or secreting, robbers, arson, aggravated assaults, aggravated cases of bribery, child-stealing, conspiracy, serious cases of libel, the pollution of a mosque, and cases of severe wounding, are punishable by the Session Courts; as well as the crimes of adultery, and sodomy, which, although under the rules of the Mahomedan Law, they are punishable with death, it has been the practice of the Courts to dispose of under the provisions of the law in question.

In all cases of murder, treason or rebellion, belonging* to gangs of thugs, using violence or compulsion, or aiding under certain circumstances the performance of Suttee, robbery by open violence or theft, in which a sentence of fourteen years' imprisonment and 195 lashes with a cat-o-nine tails may be considered insufficient, and all cases of thuggee and of rape, the Session Courts are required to refer for the final judgment of the Foujdaree Udalt; as well as all other cases in which the Session Judge may differ from the Futwa of his Mahomedan Law Officers, or from the verdict of the Assessors or Jury, who may be associated with him in the trial.

All personal objections taken by the Mahomedan Law Officers in their Futwas to the evidence of prosecutors and witnesses, on the ground of their testimony being inadmissible under the rules of the Mahomedan Law; as for instance that they are persons not of the Mahomedan persuasion, &c., the Session Judges are empowered to remove by a second question, propounded to ascertain to what penalties under the Mahomedan Law the accused would have been liable, in the absence of the personal objections advanced to the evidence of those witnesses, whose testimony may have been pronounced inadmissible, and then to pass sentence according to law; but this power of propounding a second question does not extend to the removal of objections having reference to the sufficiency of the evidence to prove the guilt of the accused, considered abstractedly and irrespectively of the competency or otherwise of the deponent, as a witness under the Mahomedan Law; and in such cases, the Session Judge, if unable to concur with the Futwa, is bound to refer the trial for the final sentence of the Court of Foujdaree Udalt.

* On trials for this offence, the Futwa of a Law Officer is not required.

In all cases referred for their final judgment, on the ground of the punishment adjudicable being beyond the competency of the Session Courts; except for the crime of having belonged to a gang of thugs, on conviction of which a sentence of transportation for life, or, in certain cases, of imprisonment for life, is prescribed; the Court of Foudaree Udalut are authorized to pass such sentence as they may think proper, with reference to the circumstances of the case; the award of capital punishment being restricted to the crime of murder, to cases* of gang robbery, which, although not accompanied by the crime of murder, have been attended by circumstances evincing the gravest criminality, to the offence of returning from transportation, and to the crimes of treason and rebellion; in which latter instance, however, the Court of Foudaree Udalut are required to report their sentences to Government, and to wait the orders of Government for three calendar months, before directing them to be carried into execution.

In cases referred in consequence of a difference of opinion between the Session Judge and his Law Officer or Assessors, the sentence of the Court of Foudaree Udalut cannot exceed that, which, in the absence of the cause of reference it would have been competent to the Session Court to award for the specific offence charged.

The Courts of Session and the Court of Foudaree Udalut are respectively empowered to require security from all prisoners tried by them, to whom the evidence, though insufficient for conviction, may be considered to attach strong suspicion of the specific offence charged, and, in default of their producing the security demanded, to sentence them to imprisonment with labour, but without irons, for any period not exceeding three years.

If, in addition to strong suspicion of the specific offence charged, there be evidence adduced on the trial showing the prisoner to be a dangerous character, it is competent to the Court of Session or the Court of Foudaree Udalut, as the case may be to, adjudge imprisonment for an indefinite period in default of the security demanded being produced.

Allusion has already been made to the establishment in the year 1839 of the office of Agent to the Governor of Fort St. George in the districts of Ganjam and Vizagapatam in the person of the Collectors of

* In practice the punishment of death is restricted to the crime of murder, but even in case of murder under the provisions of the Sections XV. and XVII. Regulation VIII. of 1802 the consideration of alleviating circumstances is held admissible to justify a mitigation of the capital sentence.

See Arunachallam's case. Page // 3.

those Districts who in addition to their Magisterial functions were invested with judicial powers in certain tracts in the districts under their charge.

A similar office was constituted in Kurnool in 1843.

In their judicial capacity the Agents are empowered to dispose of all criminal cases which are finally cognizable by the Subordinate Criminal Courts. In cases specially provided for by the Regulations or Acts of the Legislature, and punishable by no authority inferior to the Courts of Session, they are required to submit to the Court of Foujdaree Udalut a summary of the evidence with an opinion as to the punishment to be adjudged, and on receiving the instructions of that Court to pass sentence in strict conformity thereto; but if the offence charged be such as would render the trial referrible by a Session Judge to the Court of Foujdaree Udalut they are to refer it in the usual manner.

It is competent to the Agents to call in the aid of one or more native Assessors in the trial of such cases as would be cognizable by the Courts of Session and are provided for by the Regulations and Acts, but, as they are not required to take a Futwah, it is prescribed that in all cases not specially provided for by the Regulations or Acts they shall refer by letter for the instructions of the Court of Foujdaree Udalut in regard to the sentence to be passed.

The Agents are competent to delegate to their Assistants the powers of Magistrate and Subordinate Criminal Judge.

It will be apparent from the foregoing statement of the existing law for the administration of Criminal Justice that the rules of the Mahomedan Law, although originally the basis upon which the laws of this Presidency were founded, have with the progress of legislation been gradually departed from, and that whatever reference is now made to them in the adjudication of penal sentences is rather a form than a reality; the part taken by the Mahomedan Law Officers in the trial of cases cognizable by the Session Courts being, to all intents and purposes, that of Assessors, rather than of expounders of the law.

It will be seen that there is a large class of cases, for which no specific penalties are laid down in the enactments of the Legislature; but which, being punishable under the Mahomedan Law, are declared cognizable by the Officers of the Magistracy, and the Courts, and punishable by them according to their discretion; fixed limits having been laid down, within which it is competent to them to pass sentence of imprisonment with fine and in certain cases with stripes for all offences punishable under the Mahomedan Law, for which no special enactments have been passed.

It may be objected that, in the class of cases now referred to, too great a discretion is vested in the Session Courts; their powers of punishment extending to seven years' imprisonment and 195 stripes; but, be this as it may, the only reference that is made in such cases to the Mahomedan Law is whether or not the particular offence charged is punishable under its provisions, altogether irrespectively of the particular penalties, which may have been therein laid down; the Courts being required to adjudicate upon principles of jurisprudence generally recognized and approved.

The real objection to the enactments, under which the discretionary power adverted to is vested in our Courts, would appear to be this; that some acts are declared punishable under the Mahomedan Law, which, according to European principles of criminal jurisprudence, are not treated as penal offences, and that the power vested in our Courts of disposing of such cases might possibly be abused; and, although, in practice, when the extent of supervision which exists throughout our judicial system is considered, the validity of this objection may be questioned; theoretically, it can scarcely admit of dispute.

In regard to the rules of evidence, by which justice is administered, it will be observed that, when the Courts of Criminal Justice were first established, they were bound to abide by the rules of evidence laid down in the Mahomedan Law, as declared in the Futwas of their Law Officers, but that this restriction was gradually removed, and that it is now competent to the Courts of Session to remove by a second question all technical objections, which may be advanced by their Mooties to the evidence of prosecutors or witnesses; while the verdicts of those officers upon the general merits of the case, and sufficiency or insufficiency of the evidence adduced, whether for acquittal or conviction, are reversible by the Court of Foujdaree Udalut upon the trial being referred; the Futwas of the Law Officers of that Court being now entirely dispensed with, and its sentences based upon its appreciation of the evidence adduced, altogether irrespectively of its validity or otherwise under the Mahomedan Law.

The result has been that, so far, as it is found compatible with the existing state of things in India, and is considered to be based upon sound principles of jurisprudence, the English Law of evidence is now the guide of the Courts in the trial of criminal cases; no rules having been laid down in the legislative enactments, under which those trials are held, to aid the Courts in their appreciation of the various kinds of evidence presented to them; whether it consist in the direct testimony of eye-witnesses to the fact charged in the indictment, or in the attesta-

tion of facts, from which, by a process of presumptive reasoning, the object of inquiry, viz., the guilt or innocence of the person accused, may be deduced.

And we find it stated in a letter from the Court of Foujdaree Udalut to the Madras Government under date the 28th May, 1829, that by the provisions of Regulation I. of 1818, the Court considered themselves released from the obligation of observing the Mahomedan Law of evidence and that they had accordingly "turned to the Law of England" "as their legitimate guide, and as the acknowledged source of the provisions previously enacted in the Regulations of this Government for the conduct of judicial procedure."

In practice however a strict adherence to the rules of evidence according to English Law has, from various causes, been found to be impracticable; the character of the people rendering it unsafe, in some instances, to found a conviction upon evidence, which, according to the Law of England, would be considered amply sufficient; while the existing state of things has rendered it necessary to admit the testimony of particular classes of persons, whose evidence, according to the Law of England, cannot be received.

For instance it is notorious that confessions are often obtained in this country from prisoners in charge of the Police by means of actual ill-treatment or threats of it, or by inducements held out of pardon or of mitigation of punishment, and it has accordingly been repeatedly decided by the Court of Foujdaree Udalut that a confession made before a Native Police Officer, uncorroborated by other evidence, cannot be held sufficient for the conviction of the accused; and in one of the cases reported in this volume (that of Muttu and another page 44) the Court of Foujdaree Udalut ruled that a confession made before a Court of Circuit was insufficient for the conviction of the accused, in the absence of proof that the crime charged had been actually committed.

On the other hand the evidence of persons, whose testimony, under the Law of England, cannot be received, has been declared admissible; and a husband or wife have been pronounced by the Court of Foujdaree Udalut to be competent witnesses for or against each other; and the Legislature have enacted that no person shall, by reason of any offence whatever, be incompetent to be a witness in any stage of any cause, civil or criminal, before any Court in the territories of the East India Company.

In the former of these cases the decision of the Court was founded upon the peculiar state of society among the Natives of India, and the comparative laxity of the marriage tie, and consequent difference in

the interest between husband and wife from that existing in European countries, or even in those in which the Mahomedan faith* is very prevalent; especially where, as in Malabar, there exists a plurality of husbands among some classes, and of wives among others.

The Court therefore decided that, in the existing state of society in India, the safest general rule would be, not altogether to exclude the testimony of either, whether for or against the other, but to let the objection go to the credit, rather than to the competency, of such witness; observing that, where other sufficient evidence exists, it would be obviously very objectionable to make use of the testimony of parties, thus situated; and with reference to the latter restriction, in a subsequent case, in which a wife was tried for perjury, committed when examined as a witness against her husband, the fact of her examination having been unnecessary, in consequence of the existence of other sufficient evidence, was held to be a bar to her trial on a charge of perjury, and she was ordered to be released.

The enactment, which rendered admissible the evidence of persons convicted of heinous crimes, was passed with especial reference to the crime of Thuggee, the extraordinary nature of which crime, and the difficulty experienced in its detection, were considered to justify the adoption of extraordinary measures for its suppression; but it does not appear upon what grounds the provisions of the enactment in question were extended to the cases of persons convicted of other offences, to which however it has been ruled, both by the Court of Nizamut Udalut in Bengal, and by the Court of Foujdaree Udalut at Madras, to be generally applicable.

It seems to be established by the course of decision in criminal trials in this Presidency, that the points, upon which the Courts have, in practice, omitted to enforce the rules of evidence of the English Law, have reference almost entirely to the admission or rejection of evidence; the principles followed in the English Courts in regard to the appreciation of evidence being generally observed; as being based upon sound and philosophic principles, devoid of technicalities, and proved by the test of experience to be well calculated for the attainment of the object of all judicial proceedings viz., the discovery of the truth.

In the appreciation of direct evidence the rules of law and practice are few and simple, and are generally understood; but where the testimony of eye-witnesses is, either altogether wanting, or requires to be supported by the proof of circumstances, from which inferences are to be deduced, the rules which experience has suggested are far more numerous and intricate; while their correct application is obviously of

the utmost importance to the just appreciation of the evidence to which they are to be applied.

Adverting therefore to the great importance of this subject, and the absence of an authoritative treatise thereon, issued by any of the chief Courts of the Company, it has been considered desirable to conclude this preface with a brief review of the theory and rules of circumstantial evidence, as laid down in one of the latest authorities on that most important subject of jurisprudence; the theory of presumptive proof.

In a "Treatise on Presumptions of Law and Fact with the Theory and Rules of Presumptive or Circumstantial Proof in Criminal Cases by W. M. Best, A.M., L.L.B., of Grays Inn, Esq., Barrister at Law," published in 1844, it is stated that the true principle of criminal jurisprudence in this; that, whatever the nature of the evidence against an accused party, his guilt must be essentially connected with the facts proved, so as to flow from them by a species of *moral necessity*; that, in other words, conviction must not be grounded on suspicions, or even a preponderance of probability on the side of delinquency in the accused, but must be based on such a *moral certainty* of his guilt, as, if not sufficient to destroy all contrary hypothesis, shall at least reduce them within the limits of physical possibility.

All judicial evidence is either direct or circumstantial—direct, when the existence of any fact is attested by witnesses, as having come under the cognizance of their senses, or is stated in documents, the genuineness or veracity of which there seems no reason to question; circumstantial, when the existence of the principal fact is inferred from one or more circumstances, which have been established directly; and when the existence of the principal facts does not follow from the evidentiary facts, as a necessary consequence of the laws of nature, but is deduced from them by a process of probable reasoning, the evidence is said to be presumptive.

In all cases, in which the proof rests upon circumstantial evidence, the probative force of the elementary circumstances, from which deduction of the principal fact is to be arrived at, depends upon their *number, independence, weight, and consistency*; and arguing upon this axiom Mr. Best points out that, while abstractedly speaking presumptive evidence is inferior to direct evidence, seeing that in truth it is only a substitute for it, and an indirect mode of proving that which otherwise could not be proved at all, and while in direct evidence there are only two chances of error, viz., the mistake or mendacity of the witnesses; in presumptive evidence there is a third, viz., that the inference from the facts, proved ever so distinctly, may be fallacious; still,

in practice, it possesses an advantage over the direct testimony of a limited number of witnesses, in the greater assemblage of facts, and the greater number of witnesses brought under the cognizance of the Judge, and the greater facility which is thus afforded for the detection of falsehood; every false allegation being liable to be disproved by any such true fact, as it is notoriously incompatible with; while in proportion of the number of deposing witnesses, the difficulty of successfully carrying into execution any preconceived plan of mendacious testimony will naturally be increased.

The following rules are noted by Mr. Best, selected from the principal legal authorities on circumstantial evidence, as being sound in principle and generally recognized in practice.

RULE I. *The onus of proving every thing essential to the establishment of the charge against the accused lies on the prosecutor.*

RULE II. *There must be clear and unequivocal proof of the corpus delicti.*

RULE III. *The evidence against the accused should be such as to exclude, to a moral certainty, every hypothesis but that of his guilt of the offence imputed to him.*

RULE IV. *The hypothesis of delinquency should flow naturally from the facts proved and be consistent with them all.*

RULE V. *Presumptive evidence ought never to be relied on when direct evidence is withheld.*

RULE VI. *In cases of doubt it is safer to acquit than to condemn.*

RULE I. The onus of proving every thing essential to the establishment of the charge against the accused lies on the prosecutor.

This rule is derived from the maxim of law that every person must be presumed innocent, until proved to be guilty, and does not appear to require notice or illustration, being invariably acted upon and understood.

RULE II. There must be clear and unequivocal proof of the corpus delicti.

Every criminal charge involves two things; first that an offence has been committed, and secondly that the accused is the author of it.

On this point Lord Hale has laid down two rules which have met with general approbation; "I would never," says he, "convict any person of stealing the goods of a person unknown, merely because he could not give an account how he came by them, unless there was due proof made that a felony was committed of those goods. I would

never convict any person of murder or manslaughter unless the fact were proved to be done, or, at least, the body found dead:" and Mr. Starkie states it to be an established rule, that, upon charges of homicide, the accused shall not be convicted unless the death be first distinctly proved, *either by direct evidence of the fact or by inspection of the body*. With reference to the general principle thus laid down Mr. Best remarks, that in some offences the evidence establishing the existence of the crime also indicates the criminal; while in others the traces or effects of the crime are visible, leaving the author of it undetermined. Under the former of these are ranged all those offences, the essence of which consists in intention; such as conspiracy, treason, &c., which, being of an exclusively psychological nature, must necessarily be established by presumptive inference only; to which is to be added the crime of adultery, respecting which it is laid down as a fundamental rule, that it is not necessary to prove the fact by direct evidence, but that it is enough to prove such proximate circumstances, as satisfy the legal conviction of the Court, that the criminal act has been committed.

An instance of the kind referred to, in which the crime consisted entirely in intention, is to be found at page 190 of this work, in which the prisoners were tried for having conspired to kill the prosecutor with a poisonous snake, and the guilt of those convicted was established by admissions made by them before the Police, corroborated by the fact of their having been apprehended with a snake in their possession in the neighbourhood of the prosecutor's house, in consequence of the plot having been revealed by a person to whom they had communicated their intention.

In most cases however the proof of the crime is separable from that of the criminal; and in these the corpus delicti is made up of two things: first, certain facts forming its basis; and, secondly, the existence of criminal agency as the cause of them. With reference to the former of these it is the established rule that the facts which form the basis of the corpus delicti ought to be proved, either by direct testimony, or by presumptive evidence of the most cogent and irresistible kind. In cases of murder the fact of the death should be shown, either by witnesses who were present when the murderous act was done, or by proof of the body having been seen dead; or, if found in a state of decomposition, or reduced to a skeleton, it should be identified by dress or circumstances. In proof of the sound policy of this rule Mr. Best quotes the following case which has been often cited. "An uncle had the bringing up of his niece, a girl about eight or nine years old, to whom

he was heir at law, and happening to correct her for some offence, she was overheard by some of the neighbours to cry out, "Oh good uncle, kill me not!" after which she disappeared and was not to be found. The uncle was taken up on suspicion of murder, and admonished by the Judge of Assize to produce the child at the next Assize. This he could not do: but in order to avert suspicion, dressed up another child, about her age and resembling her in person, whom he presented to the Justices as his niece. The deception was, however, detected, and he was convicted and executed for her murder. The girl, who had only run away to avoid being beaten, returned afterwards and claimed her property."

This rule was acted on by the Judges of this Court in a remarkable case reported at page 76 of this work, (that of *Velutedata Unni Cutan*) in which the principal ground for the prisoner's acquittal was the insufficiency of the proof of the *corpus delicti*; the evidence to the identification of certain remains, which were supposed to be those of the woman, with whose murder the prisoner was charged, being considered inconclusive.

When however the fact of murder can be proved by eye-witnesses, the inspection of the body after death may be dispensed with.

The basis of the *corpus delicti* being once established, presumptive evidence is receivable to complete the proof by rebutting the hypothesis of natural causes and irresponsible agency have produced the facts proved. For this purpose all the circumstances of the case should be taken into consideration. On finding a dead body for instance, it should be considered whether death may not have been produced from natural causes, or been the result of suicide; and on this latter subject the following directions given by Dr. Beck to the members of his own profession are quoted by Mr. Best. "Besides noticing the surface of the body we should pay particular attention to the following circumstances; the situation in which it is found, the position of its members, and the state of its dress; the expression of countenance, the marks of violence,* if any be present; the redness or suffusion of the face; the last is important, as it may indicate violence in order to stop the cries of the

* The utility of a careful observance of this rule is remarkably illustrated in a trial reported at page 222 of this volume (the case of *Pandaratil Kondi Menon* and 22 others) in which certain persons who had formed the members of an inquest were convicted of having concealed the fact of a murder, principally upon evidence given by the Medical Officer by whom the corpse was inspected, to the effect that certain wounds and mutilations found upon it, which the prisoners alleged had been inflicted after the disinterment of the body, must from the appearance of the corpse and the contractions of certain muscles have been inflicted during life.

individual; the quantity of blood on the ground, or on the clothes, should be noticed, and, in particular, the probable weapon used, the nature of the wound, and its depth and direction. In a case of supposed homicide by means of a knife or pistol the course of the wound should be examined, whether it be upwards or downwards, and the length of the arm should be compared with the direction of the injury. Ascertain whether the right or left arm has been used, and, as the former is most commonly employed, the direction should correspond with it and be from right to left." It is of the utmost importance to examine minutely for the traces of another person at the scene of death, as experience shows that murderers have often disposed of the bodies of their victims in such a manner, as to lead to the supposition of suicide, or death from natural causes.

RULE 3. The evidence against the accused should be such as to exclude, to a moral certainty, every hypothesis, but that of his guilt of the offence imputed to him.

No person should be convicted of a crime upon evidence, which, upon a fair consideration of it, though bearing strongly against the accused, may appear to be not inconsistent with the supposition that the crime has been committed by another person, or that the fact proved has resulted from another cause than the guilty agency of the accused.

Mr. Best cites several* instances in which the lives of the persons

*A servant girl was indicted for the murder of her mistress; the chief evidence against her was that no person lived in the house but the prisoner and the deceased, and all the doors and windows were secure as usual. After the prisoner was condemned and executed, it appeared, by the confession of one of the real criminals, that they had gained admittance into the house, which was situated in a very narrow street, by means of a board thrust across the street from an upper window of the opposite house to an upper window of that in which the deceased lived, and having committed the murder returned the same way, leaving no traces behind them.

The following extraordinary case is said to have occurred in France.

An old widow, reported to have a large sum of money by her, lived in a small shop facing a street, with a back shop, which served as her bed room. The entire family consisted of herself and a man servant who slept on the fourth story of the same house, but whose room had no communication with those of his mistress except through the door of the front shop, which it was his usual practice to lock at night and take the key to his own room. One morning this door was observed open; but without any marks of violence or breaking upon it, and the old woman was discovered lying on her bed murdered, apparently by a bloody knife, which was found lying on the floor at some distance from her, while a strong box in the room was opened, and had been rifled. One hand of the corpse grasped a quantity of hair, ascertained by comparison to be that of the servant, and the other a cravat, which turned out to be his property; while the key of the shop was found in its usual place. On the strength of these presumptions of his being the murderer of his mistress the unfortunate man was put to the torture,

have been jeopardised by the fabrication of circumstances either casual or intentional; casual, when the accused, though innocent, is shown to have had peculiar motives or facilities for committing the act with which he is charged; intentional, when fabricated by the accused himself, who either does something, when innocent, from the dread of a criminal charge, which subsequently involves him in suspicion, or being guilty of some other offence, though innocent of that with which he is charged is impelled by his guilty conscience to a line of conduct which causes him to be wrongly suspected; or when fabricated by others, either to screen the real criminal, or, from malicious motives, to fasten guilt upon the accused. To this head are to be referred those cases in which a crime resolved on has been repented before execution, but the same offence has afterwards been committed by another person; and others in which the intention to commit the crime has persisted; but the power has failed in consequence of the accused having been anticipated in his purpose.

A remarkable illustration of the importance of the foregoing rule is afforded in the case of Mādiga Puturāz Karra Tippadu, reported at page 227 of this volume, in which the prisoner was convicted by the Agent to the Governor of Fort Saint George at Kurnool of the murder of one Shālī Sahib, the commission of which was subsequently confessed to by another individual.

In this case the person, whose murder formed the subject of the trial, was discovered by one of his servants, at an early hour in the morning, lying on his cot in the agonies of death, with a deep wound on his forehead. In consequence of a quarrel which had recently occurred between the accused and the deceased, and with reference to which a complaint of ill treatment was proved to have been preferred by the former on the previous day before the Curnums of his village, the accused was apprehended on suspicion, together with another person, in whose company it was proved by the evidence of his own wife that he had left his house at an untimely hour in the morning on which the murder took place, had remained absent for a period, and returned about the time when it appeared from the evidence that the deceased must already have received

the crime, and was broken at the wheel. In process of time however it was discovered that the murder and robbery had been committed by a man who was the servant's favorite companion, who, in order to avert suspicion from himself, and cast it on his friend, had furnished himself with a knife and cravat belonging to him. He also availed himself of an opportunity to take a wax impression of the shop key; and, as he was in the habit of dressing the servant's hair, had saved from time to time a considerable portion of the combings, which, after perpetrating the murder, he placed together with the cravat in the hands of the deceased.

ed the fatal blow. A few days afterwards an axe was discovered in the house of the accused, which was found to correspond with the wound which caused the death of the deceased; and two persons, who had passed by the house of the former at an early hour in the morning in question, and had stopped to ask him the result of the complaint made by him on the previous day, deposed to the accused having made use of an expression, which was afterwards considered to refer to the murder of the deceased.

On this evidence the Agent convicted Karra Tippadu of the murder charged, and recommended that he should be sentenced to death. In the mean time the real murderer came forward, explained the motives which had impelled him to the commission of the crime, and deposed to facts which were corroborated by other persons, and which left no doubt as to the truth of his confession; and on his trial it appeared that suspicion had in the first instance been directed to him, but that in consequence of his asseverations of his innocence, and the quarrel which had recently occurred between the deceased and Karra Tippadu, the latter was fixed upon as the perpetrator of the crime.

It seems obvious that of the circumstances, which were considered by the Agent to form a chain of evidence conclusive of the guilt of Karra Tippadu, that, which bore most strongly against him, was the expression which was alleged to have been made use of by him on the morning of the murder, in reply to the questions put to him regarding the result of the complaint he had preferred against the deceased on the previous day.

The fact of the accused having at the particular time in question made use of an expression, implying the commission of an act of violence towards a person with whom he had had a recent quarrel, and who it was proved must have been already murdered at the time the expression in question was uttered; coupled with the fact of his previous absence from his house at an untimely hour, and with the subsequent discovery in his possession of an instrument tallying in size with the wound on the forehead of the deceased, would undoubtedly tend strongly to the crimination of the accused; and, in the absence of any cause of suspicion against any other person or persons, would involve him in very strong suspicion; nearly, if not altogether, amounting to that degree of presumptive proof, requisite to his full conviction of the crime.

But to render the chain of evidence, thus described, deserving of any weight whatever, it was obviously necessary that the very terms of the expressions alleged to have been made use of should be accurately reported; the mysterious nature of the words, alleged to have been used,

rendering it clearly of the utmost importance that the exact words should be ascertained ; as from the exact words alone would it be possible to discover the meaning which the expression was intended to convey. On this point the evidence most signally broke down ; the witnesses, who deposed to the utterance of the expression referred to, differed as to its terms ; and their testimony, for this reason, should have been altogether thrown out of consideration, as being insufficient to establish the fact to which they deposed.

Leaving out then the criminatory expression attributed to the accused, as not having been established by the evidence adduced ; there remained the existence of a motive, which, supposing it to have been proved, would afford in itself no evidence that it had been acted on ; the departure of the accused from his house at an untimely hour, which, in various ways, might be accounted for ; and the discovery in his house, of an instrument which, he being a chuckler, it was natural that he should possess, as an article of his trade ; and the discovery of which, although, considering its correspondence in size with the wound inflicted on the deceased, it would, when coupled with other criminatory circumstances, form an additional link in the chain of evidence ; of itself would obviously be insufficient to afford the slightest presumption of guilt.

The principal cause of the erroneous conclusion, at which the Agent arrived, would appear therefore to consist in his overlooking, or at all events attaching no importance to, the discrepancies in the evidence of the witnesses who deposed to the terms of the self criminatory expression alleged to have been made use of by the accused ; the other circumstances, which were considered to point to him as the perpetrator of the murder, being clearly by no means inconsistent with the supposition of his innocence, and surely altogether insufficient to exclude to a moral certainty every hypothesis, but that of his guilt.

It is due however to the experienced Officer, before whom these trials were held, to refer to a very remarkable circumstance connected with them, for which it seems most difficult to account ; viz., the omission of all the witnesses at the first trial to advert to the fact of the father of the deceased having, in the first instance, suspected and accused Sanjivigādu, who afterwards confessed himself to have been the murderer, or to make any mention of the quarrel which had recently taken place between the latter and the deceased. Questions were put by the Agent to ascertain whether any other person was supposed to be at enmity with the deceased, which were well calculated to elicit the facts stated in the subsequent trial ; and for the silence of the witness-

es on this point, and especially of the deceased's father who was tried as third prisoner in the case, it is almost impossible to account. It can only be surmised that they, like the other villagers, having once arrived at the conclusion that the first prisoner Karra Tippadu was the murderer, purposely refrained from making any statements which might tend to invalidate the proofs of that individual's guilt.

In another point of view the consideration of this case affords a good illustration of the caution which is requisite in the appreciation of circumstantial evidence, and of the necessity which exists for requiring the most clear and satisfactory proof of the several circumstances, upon which the presumption of guilt is based. There is an old maxim, the fallacy of which is now pretty generally admitted—"that circumstances cannot lie." It has been proved by experience that circumstances lead to the most fallacious conclusions; but, as Mr. Best very rightly observes, "even assuming the truth of the assertion that facts or circumstances cannot lie, still so long as witnesses and documents by which the existence of those facts is to be established, *can*, so long will it be impossible to arrive at infallible conclusions;" and for this reason it is most important that in all cases, in which the proof depends upon circumstantial evidence, none but the most satisfactory testimony should be admitted, as proof of the alleged circumstances, from which the presumption of guilt is to be deduced.

RULE IV. The hypothesis of delinquency should flow naturally from the facts proved, and be consistent with them all.

Mr. Best remarks that the chief danger to be avoided, when dealing with presumptive evidence, arises from a proneness natural to the human mind to jump at conclusions from facts, without duly advertent to others inconsistent with the hypothesis which those facts seems to indicate. "The human mind," says Lord Bacon, "has this property, that it readily supposes a greater order and conformity in things than it finds; and although many things in nature are singular and dissimilar, yet the mind is still imagining parallel correspondences and relations betwixt them which have no existence." And it has been observed by Mr. Starkie that "all facts and circumstances, which have really happened, were perfectly consistent with each other, for they did actually so consist." It is therefore a necessary consequence that, if any of the circumstances established in evidence be absolutely inconsistent with the guilt of the accused, that hypothesis cannot be true; nor should it be admitted as amounting to proof, if there be contrary hypothesis and facts, which, though insufficient to exclude the supposition of guilt, tend strongly to disprove it. Mr. Best quotes a case in which the latter

rule was violated ; a young woman having been convicted and executed for attempting to poison a family, with whom she lived as cook, by putting arsenic into some food. It was proved that she had herself partaken of, and suffered severely from, the poisoned food ; but of this important circumstance no notice was taken in the Recorder's charge, and it appears that another person has since confessed the crime.

➤ **RULE V.** Presumptive evidence ought never to be relied on when direct testimony is withheld.

This rule is a branch of the general principle, that the wilfully withholding important evidence raises a presumption against the party, and throws discredit on the evidence which he offers.

RULE VI. In cases of doubt it is safer to acquit than to condemn.

This is a rule so thoroughly understood, and of such universal application, wherever the administration of justice is vested in English Judges, that it would scarcely be necessary to notice the principle upon which it is founded, had it not been attacked by an eminent writer on Moral and Political Philosophy, who designates the rule as " a popular maxim having a considerable influence in producing injudicious acquittals." " The security of human life," Dr. Paley argues, which is essential to the value and enjoyment of every blessing it contains, and the interruption of which is followed by universal misery and confusion, is protected chiefly by a dread of punishment. The sufferings or even the death of an innocent individual cannot be placed in competition with this object. Courts of Justice therefore ought not to be deterred from the application of their rules of adjudication by every suspicion of danger, or by the mere possibility of confounding the innocent with the guilty. They ought rather to reflect that he who falls by a mistaken sentence may be considered as falling for his country, while he suffers under the operation of those rules, by the general effect and tendency of which the welfare of the community is maintained and upheld." In answer to these objections Mr. Best observes—" It is perfectly true that the security of civil life is the first object of penal laws, and that that security is chiefly protected by the dread of punishment ; but then it is of punishment *as a consequence of guilt*, and not of punishment falling indiscriminately on those who have, or who have not, provoked it by their crimes. When the guilty escape, the law has merely failed in its intended effect, but when the innocent become its victims, it injures the very persons it was meant to protect, and destroys the security it was meant to preserve. The necessary result of an erroneous conviction is to shake confidence in the administration

of justice, when people reflect that every individual they see condemned to punishment may be in the highest degree unfortunate, and in no degree guilty ; whose conviction and sufferings, are inflicted, not so much from an actual belief in his guilt, as in the nature of a sacrifice to a supposed expediency. Under such a system few would care to prosecute for offences, still fewer to come forward with voluntary testimony against those suspected of them." Adverting to another evil which seems to have escaped the notice of Dr. Paley, Sir Samuel Romilly observes, "Instances have occurred when a man has been offered up as a sacrifice to the laws, though the law has never been violated ; when the tribunals have committed the double mistake of supposing a crime where none had been committed, and supposing a criminal where none could exist. These however, are very gross, and, therefore, very rare examples of judicial error. In most cases the crime is ascertained, and to discover the author is all that remains for investigation ; and, in every such case, if there follows an erroneous conviction, a two-fold evil must be incurred ; *the escape of the guilty as well as the suffering of the innocent.* Perhaps amid the crowd of those who are gazing on the supposed criminal, when he is led out to execution, may be lurking the real murderer, who, while he contemplates the fate of the wretch before him, reflects, with scorn on the imbecility of the law, and becomes more hardened, and derives more confidence in the dangerous career in which he has entered."

Having described the rules by which the appreciation of circumstantial evidence should be directed, Mr. Best proceeds to the examination of some of the principal species of presumptive proof in criminal cases ; which he classifies as follows :

1. Real evidence or evidence from things.
2. Evidence derived from the *antecedent* conduct or position of the accused ; such as peculiar motives, means, or facilities of committing the offence ; preparations, or previous attempts to commit it ; declarations of intention or previous threat to commit it.
3. Evidence derived from the *subsequent* conduct of the accused ; such as sudden change of life or circumstances ; silence when accused ; false or evasive statements made by him ; suppression or fabrication of evidence ; forgery of exculpatory evidence, flight from justice, and tampering with the officers of justice ; indications of fear, evidenced either by passive deportment or acts showing a desire for secrecy.
4. Confessorial evidence.

The species of proof derivable from Real Evidence or Evidence from Things are divided by Mr. Bentham into six heads.—1. 'The subject matter of the offence itself, such as the person killed or hurt ; the thing stolen, damaged, or destroyed ; the instrument fraudulently uttered or fabricated ; the genuine money diminished ; the counterfeit money fabricated. 2. The fruits of the offence ; such as the goods or money taken in larceny, embezzlement, &c., the profit obtained by forgery, &c. 3. The instrument of the offence ; such as the weapon or instrument of death, in cases of murder, the combustibles in cases of arson, &c. 4. The materials appropriate to be converted into instruments of the offence ; such as leaves from which a poison could be easily made, drugs capable of being used for the purpose of adulterating food, &c. 5. Receptacles enclosing any of the above. 6. Detached circumjacent bodies ; such as the floor or bed on which a person is found ; traces of blood near a corpse, or on a way leading from it, &c.—and to these Mr. Best adds a 7th " Peculiarities about the person of the accused ; such as natural marks, wounds, or stains of blood on his person or clothes ; injuries to, or disorder of, his dress.

In illustration of the nature and probative force of the evidence derived from things Mr. Best refers to the following cases quoted by Mr. Starkie in which apparently slight, or unexpected, circumstances have led to the detection of offenders.

In a case of burglary in which the thief had gained admittance into the house by opening a window with a penknife, which was broken in the attempt, and a part of the blade left sticking in the window frame, a broken knife, the fragment of which corresponded with that found in the frame, was found in the pocket of the prisoner. So when a man was found killed by a pistol, a part of the wadding of which was found in the wound, and consisted of a piece of paper, part of a ballad, the corresponding part was found in the pocket of the prisoner. In another case of murder one of the circumstances to prove the prisoner to have been the criminal agent was the correspondence of a patch on one knee of his breeches, with the impression made on the soil close to the place where the murdered body lay.

Adverting however to the natural propensity of the human mind to run after coincidences of this nature, and to attribute to them a more conclusive effect than properly belongs to them, unless supported by other evidence, Mr. Best quotes, as an instance of this propensity, and of the necessity of guarding against it, the case of a shoemaker who was indicted for the murder of a female, and whose leather apron had several circular marks, made by paring away superficial pieces, which were sup-

posed to have been removed as containing spots of blood ; but which were satisfactorily proved in his defence to have been cut off by him for plasters for a neighbour.

The several infirmative circumstances affecting real evidence, and to which it may be indebted for its criminative shape, are next discussed, and are classified under the heads of *accident, forgery, or innocent conduct of the accused.*

To the head of real evidence produced by accident are to be referred those cases, where the appearance of guilt is the result of irresponsible or unconscious agency ; and in illustration of this a case is quoted in which a person was executed as a thief on the strength of a number of missing articles of silver having been found in a place to which he alone had access, and which were afterwards discovered to have been deposited there by a magpie.

Forgery of real evidence, Mr. Best observes, may arise from one or more of the following causes. 1. With a view of self exculpation. 2. Maliciously, with the intention of injuring the accused, or others. 3. In sport or in order to effect some moral end.

As an instance of the danger to be apprehended from the *self-exculpatory forgery of real evidence* a case is referred to, quoted by Lord Hale, in which " a man was convicted and executed for horse-stealing, on the strength of his having been found on the animal on the day it was stolen, but whose innocence was afterwards made clear by the confession of the real thief, who acknowledged that on finding himself closely pursued by the officers of justice he had requested the unfortunate man to walk the horse for him, while he turned aside on a necessary occasion, and thus escaped. This species of forgery of real evidence has likewise been resorted to by innocent persons, conscious that appearances are against them, to avert suspicion or turn it on some one else.

The malicious forgery of real evidence is instanced by the case of Le Brun, who was accused of the murder of his mistress, in which the officers of justice are alleged to have altered a common key, found in his possession, into a master key, in order to make it appear at the trial that he had a facility for committing the murder which he really did not possess.

Another remarkable example is related in a Report recently published on the Wellicado Jail at Colombo in Ceylon. "A man named Sellapa Chitty of the class termed "Nattacotie," reported wealthy, and largely

engaged in trade, charged his neighbour and rival in business with causing the death of a Malabar Cooly by burning and otherwise ill-treating him ; whereas it was found that the man had died a natural death, and that the prisoner, together with a relative and servant, had applied fire to several parts of the body and deposited it on the premises of the accused ; after which he gave notice to the Police and charged the innocent party with the murder. The case seemed clear, and the accused would have been tried on the capital charge, had not the medical gentleman on the inquest observed the unusual appearance of the burnt parts, and finally discovered that the injuries had all been inflicted on the body *after death*." "The tables being turned, the accusers were tried and convicted of perjury, and the principal, Sellappa Chitty, was sentenced to 75 lashes and five years' hard labour in chains ; the other two to shorter periods."

In the annals of criminal justice in this country instances of this species of forgery of real evidence are far from uncommon ; it being a matter of notoriety that the clandestine placing of articles in the houses of accused persons, with a view to facilitate their conviction of a crime charged, is frequently resorted to by the native officers of police ; while the production by the police from the houses of accused persons of articles, which are really their property, but are alleged to have been obtained by theft or robbery, is still more common.

Of the forgery of real evidence, committed either in sport, or with a moral end in view, an illustration is borrowed from Mr. Bentham's *Rationale of Judicial Evidence*, in the story of the Patriarch Joseph, who, with the view of creating alarm and remorse in the minds of his guilty brothers, caused a silver cup to be privately hid in one of their sacks, and after they had gone some distance, caused them to be arrested as thieves and brought back.

The other infirmative hypothesis affecting real evidence, viz., *the appearance of guilt having been produced by the innocent conduct of the accused in furtherance of some lawful design*, is illustrated by a case of theft in which the stolen property is found in the possession of a person, who knowing or suspecting it to have been stolen has taken possession of it with a view of either seeking out the true owner in order to restore it, or of bringing the thief to justice, but, before this can be accomplished, becomes himself an object of suspicion, in consequence either of the stolen goods being seen in his possession, or of false information being laid against him by the real criminal in order to save himself.

Before leaving the subject of real evidence Mr. Best adverts at some

length to one particular species of it, viz., the presumption of guilt in cases of larceny, drawn from the possession by the accused of the whole or some portion of the stolen property ; which, although, according to the practice of the Courts, when the possession is recent and exclusive, it is considered to cast on the accused the onus of showing that he came honestly by the stolen property ; from its frequent occurrence, and the obvious danger of acting indiscriminately upon it, has attracted the attention of the Judges, who have endeavoured to impose some practical limits on its operation, in cases where it constitutes the only evidence against the accused.

• It has been decided then that to justify the onus of explanation being thrown upon the accused the possession must be both recent and exclusive ; the question of what shall be considered recent being determinable by the “ nature of the articles stolen, whether they are of a nature likely to pass rapidly from hand to hand, or such as the accused might from his situation in life or the nature of his vocation become “ innocently possessed of.” That such possession should be exclusive, to render it at all conclusive of the guilt of the accused, is sufficiently obvious ; but, as Mr. Best observes, “ it is in its character as a *circumstance* joined with others of a criminative nature, that the fact of possession becomes really valuable, and entitled to consideration, whether it be ancient or recent, joint or exclusive,” and whatever be the nature of the evidence “ the Court must be morally convinced of the “ guilt of the accused, who is not to be condemned on any artificial “ presumption or technical reasoning, however true and just in the abstract.”

The second species of circumstantial evidence, that derived from the Antecedent Conduct or Position of the Accused, is described by Mr. Best as either being furnished by the existence of *motives, means, and opportunities to commit the offence charged, or by antecedent preparations and previous attempts, or by declarations of intention and threats.*

The existence of *motives, means, or opportunities* must rather be considered to remove the improbability of the accused having done an act which would render him liable to punishment, than to afford presumption of guilt, unless coupled with other circumstances and especially with facts proved by the conduct of the accused, when it may become an exceedingly important element in a chain of presumptive proof ; and so on the other hand the absence of any apparent motive is always to be deemed a fact in favor of the accused. The danger of attributing too much force to the supposed existence of a motive is well exempli-

fied in the case of M. P. Karra Tippadu which has been already adverted to.

In treating of *antecedent preparations* and *previous attempts*, Mr. Best refers to the former such preparations as consist in "purchasing, altering or fashioning instruments of mischief; repairing to the spot destined to be the scene of it; acts done with a view of giving birth to productive or facilitating causes, for removing obstructions, for obviating suspicions," &c. as well as others of a secondary nature for preventing discovery or suspicion of the former. The probative force of previous attempts is of course greater than that of preparations; the former being carried one step further and nearer to the criminal act of which the accused is charged.

It being obvious however that the probative force both of preparations and attempts rests on the presumption that an intention to commit the individual offence charged was formed in the mind of the accused, which persisted until power and opportunity were found to carry it into execution; Mr. Best proceeds to point out the infirmative hypotheses, which should be taken into consideration in connexion with the presumption of guilt, viz., that the intention may have been mistaken, and whether innocent or criminal may have been altogether different, and having reference to a different object, from that supposed, or that it may have been abandoned before execution, or that, although the intention persisted, the act intended may have been anticipated by others; and this latter hypothesis is illustrated by the case of an inn-keeper named Jonathan Bradford who was convicted and executed for the murder of a guest, who was found in his house robbed and murdered in the middle of the night, his host standing over the bed with a dark lantern in one hand and a knife in the other, both hands and knife bloody, and exhibiting symptoms of the greatest terror; and in regard to whom it afterwards appeared that the crime had been committed by another person immediately before Bradford came into his guest's room, which he had also entered with a similar design; while the blood on his hands was occasioned by his having, when turning back the bed-clothes, to see if the deceased was really dead, dropped the knife on the bleeding body.

To the consideration of *declarations of intention and threats* the infirmative hypotheses adverted to with reference to preparations and attempts, are held applicable, together with some additional ones peculiar to themselves, viz., that the words uttered may have been misunderstood or misremembered; that they may have been uttered through mere bravado, and not acted on; that they may



have been taken advantage of by a third party, who, being desirous of committing the offence has profited by the occasion of the threat to avert suspicion from himself; and lastly that by placing persons on their guard they are calculated to frustrate their own accomplishment.

Of the criminative facts occurring *subsequent* to the perpetration of guilt, Mr Best adverts in the first place to a sudden change of life or circumstances, which, though under peculiar circumstances frequently affording a presumption of guilt, is held to be insufficient, when standing alone, to justify the accused being put on his defence.

Next in order are the presumptions of guilt derived from *silence under accusation, evasive responsion, giving false answers, and suppression or fabrication of evidence.*

Silence under accusation is either *judicial*, when the accused observes silence on being interrogated by a judge or person in authority; or *extra judicial*, when the criminative interrogation or observation is made by a private person. To the former, as the examination of the accused, with the view of extracting criminative evidence from him, is not permitted in any Courts administering justice according to the principles of English Law, it is unnecessary to advert; but the latter, viz., *extra judicial non-responsion* being generally considered to tell strongly against the accused; it is necessary to consider the several infirmative circumstances to which it is liable as evidence of guilt. On this point Mr. Best refers in the first place to the mendacity or mistake of witnesses, who may have misrepresented the silence of the accused, or erroneously supposed that he understood the accusation or insinuation made against him; and he quotes the following observations of Mr. Bentham, as illustrative of the distinctions which should be observed in drawing inferences from extra judicial non-responsion, with reference to the circumstances under which it may have taken place.

“The strength of the inference (viz., guilt under the circumstance of silence under accusation) depends principally on two circumstances; the strength the appearances may naturally be supposed to possess in the point of view in which they present themselves to the party interrogated (or suspected,) and the quality of the interrogator. Suppose him a person of ripe years, armed by the Law with the authority of justice, authorized (as in offences of a certain magnitude persons in general commonly are under every system of law) to take immediate measures for rendering the supposed delinquent forthcoming for the purposes of jus-

tice, as by conducting him before, or giving information to, a magistrate authorized to take such measures, and, to appearance, having it in contemplation to do so ; in such case, silence, instead of answer to a question put to the party by such a person, may afford an inference, little if at all weaker than that which it would be afforded by the like deportment in case of judicial interrogation before a magistrate. Suppose, on the other hand, a question put in relation to the subject, at a time distant from that in which the cause of suspicion has first manifested itself—just at a time when no fresh incident leads to it,—put therefore, without reflection, or *in sport*,—by a child, from whom no such interposition can be apprehended and to whose opinion no attention can be looked upon as due ; in a case like this the strength of the inference may vanish altogether.”

In regard of *evasive responsion*, that is to say the refusal of the accused, though denying his guilt, to explain suspicious circumstances alleged against him, Mr. Best observes that in some cases it is out of the power of an innocent person to explain *all* the circumstances which press against him ; that in others it may be out of his power to do so, without disclosing facts, affecting either other persons or himself, which he is anxious to conceal, or disclosing his guilt of other offences, though innocent of that which forms the particular subject of charge ; while in other cases, when the prosecution may be groundless or the result of conspiracy, the accused may consider it good policy to reserve his defence.

With reference to *false responsions* Mr. Best remarks that, though it is a criminative fact infinitely stronger than silence under accusation, the possibility of the conversation having been misunderstood or misrepresented, and of persons, though innocent, having under the influence of fear had recourse to false statements, are infirmative hypotheses affecting the presumption of delinquency ; the latter of which is likewise applicable to the suppression or fabrication of evidence ; both acts in themselves naturally affording a strong presumption of guilt.

The other species of inculpatory evidence noticed by Mr. Best, as being derivable from the conduct of the accused subsequent to the occurrence of the crime charged, viz., *evasion of justice, or the appearance of fear, indicated, either by the deportment of the accused when charged, or by a desire of secrecy about the time the offence is supposed to have been committed* ; are all liable to infirmative hypotheses of the nature of those which have been already adverted to ; and it need only be remarked

in regard to that first mentioned, viz., *evasion from justice*, that the fact of absconding, or concealment, is by no means conclusive evidence of the intention of the accused to evade prosecution for the particular offence laid to his charge ; and that even, if the intention be proved, though a strong circumstance, it is not conclusive evidence of guilt.

Confessorial evidence remains to be adverted to. This is either direct or presumptive ; direct, when the confession of guilt leaves no room for doubt or inference ; presumptive, when the words used are ambiguous, and do not necessarily imply guilt, but leave it to be inferred. Mr. Best distinguishes between *judicial* and *extra-judicial* confessions ; the former of which, he observes, are generally held to be sufficient for a conviction ; remarking however that “ if the confessions appear incredible, especially if there be no traces to be found of a *corpus delicti*, or it is manifest that the prisoner has some collateral object in view, to induce him to make a false one, or if it appear to be made in consequence of a promise of leniency or threat of punishment, &c., the Judge ought not to receive it.” He next preceeds to discuss extra-judicial confessions with reference, 1st, to their admissibility in evidence ; 2d, to their force and effect when received.

An extra-judicial confession, to be admissible in evidence, must have been made freely, not extracted by coercion, nor by any inducement, held out by any person, having any kind of lawful authority over the accused.

In regard to their force and effect several cases are quoted, which go to establish that the unsupported confession of an accused person is sufficient proof both of the *corpus delicti* and of his own criminal agency ; but upon this point Mr. Best observes that such a principle should be acted on with great caution ; and, as has been already stated in this preface, the danger of acting on confessions in this country is so fully recognized, that, even where there is full proof of the *corpus delicti*, the Court of Foujdaree Udalt have ruled that a confession made before a Native Police Officer, uncorroborated by other evidence, cannot be held sufficient for the conviction of the accused ; while in cases of murder a confession made at the trial is held to be insufficient to compensate for the absence of proof of the *corpus delicti*.

The infirmative circumstances applicable to confessorial evidence Mr. Best enumerates as follows. 1st, that a false confession may have been made to stifle inquiry into other matters. 2d, from a dread of annoyance or vengeance from other quarters. 3d, with a view to benefit others whose interests are dearer to the accused than his own. 4th, from the

relation between the sexes. 5th, from vanity. 6th, from terror and confusion of mind on the part of the accused at the sight of a large body of evidence arrayed against him. 7th, from ignorance of forensic terms. 8th, from a desire to injure others denounced as participators in the offence confessed. 9th, to obtain a collateral object. 10th, from being tired of life. 11th, from misconception of the fact, as in the case of a man who mistaking a corpse, which has been conveyed into his chamber, for a robber, inflicts blows or wounds on it and subsequently discovering it to be lifeless, considers himself to have committed homicide ; and lastly, from the pressure of physical torture.

In addition to the foregoing circumstances liable to affect confessional evidence in general, Mr. Best remarks that extra-judicial confession, especially when not plenary, are subject to additional infirmative circumstances, such as mendacity in the reports of the alleged confession, or misinterpretation of its purport on the part of the witnesses deposing.

Some of the causes above assigned for false confessions may appear somewhat far-fetched ; and certainly, as the Law is administered in the Company's Courts, the ignorance of forensic terms is not likely to produce such a result.

The causes in India, to which false confessions are generally to be ascribed, are ill-usage, or promises held out of pardon or of mitigation of punishment, resorted to by the Police to extort from the accused the admission of his guilt ; nor is it always to the Police confessions only that the influence of such ill-treatment or inducements extends ; cases having occurred in which confessions, recorded before European Magistrates and Judges, have been proved to have been delivered under the influence of fear produced by previous ill-treatment at the hands of the Police.

A lamentable instance of the condemnation of innocent persons founded upon confessions made by them before a Magistrate under the influence of ill-usage at the hands of the Native Police Officers, is to be found in a case reported in this volume, at page 132, in which two persons were convicted and sentenced to transportation for life for having been concerned in an attack upon the Treasury of Ellore, and in the murder of two Sepoys on guard, but in which it has since been ascertained that they had no concern ; the crime having been committed by a gang of Dacoits, by some members of which the real facts of the case were recently disclosed.

The following remarks on the universal application of the rules of

evidence, which have been brought under review in the latter portion of this preface, occur in a recent work on circumstantial evidence, of much ability and research.

Wills on Circumstantial Evidence.

"The rules of evidence are the practical maxims of legal and philosophic sagacity and experience, matured and methodized by a succession of wise men, as the best means of discriminating truth from error, and of contracting as far as possible the dangerous power of judicial discretion. They have their origin in man's nature, as an intellectual and a moral being; and "are founded (to use the language of one of the most eloquent of advocates,) in the charities of religion, in the philosophy of nature, in the truths of history, and in the experience of common life." Such rules must of necessity be substantially the same, in all cases and in every civilized country; and the inviolable observance of them is indispensable to social security and happiness. To disregard them, under whatever circumstances or pretext, is to subject to the sport of chance those fundamental rights which it is the object of social institutions to secure."

"It must be conceded, that with the wisest laws, and with the most perfect administration of them, the innocent may sometimes be doomed to suffer the fate of the guilty; for it were vain to hope that from any human institution all error can be excluded. But certainty has not ~~not~~ always been attained, even in those sciences which admit of demonstration; still less can unfailing assurance be invariably expected in investigations of moral and contingent truth. Nor can any argument against the validity and sufficiency of circumstantial evidence as a means of arriving at moral certainty be drawn from the consideration that it has occasionally led to erroneous convictions, which does not equally apply as an objection against the validity and sufficiency of moral evidence of every kind; and it is believed that a far greater number of mistaken sentences have taken place in consequence of false and mistaken direct and positive testimony, than from erroneous inferences drawn from circumstantial evidence."

"These considerations ought not therefore to produce an unreasonable and indiscriminate scepticism; the legitimate consequence of such reflections should be to inspire a salutary caution in the reception and estimate of circumstantial evidence, and to render the legislator especially wary how he authorizes, and the magistrate how he inflicts,

"punishment of a nature which admits neither of reversal nor mitigation.
"Would that the total abolition of such punishment were compatible
"with the paramount claims of social security ! It is indispensable how-
"ever, under every system to the very existence of society, that the tri-
"bunals should act upon circumstantial evidence. Infallibility belongs
"not to man ; and even his strongest degree of moral assurance must
"be accompanied by the possible danger of mistake ; but, after just ef-
"fect has been given to sound practical rules of evidence, there will re-
"main no other source of uncertainty or fallacy, than that general lia-
"bility to error, which is necessarily incidental to all investigations
"founded upon moral evidence, and from which no conclusion of the
"human judgment in relation to questions of contingent truth, whether
"based upon direct or circumstantial evidence, can be absolutely and
"entirely exempt."

THE JUDGES
OF THE
COURT OF FOUJDAREE UDALUT,
PRESENT DURING THE PERIOD OF THESE REPORTS.

IN 1826.

J. H. D. OGILVIE, Esq., Chief Judge.
F. A. GRANT, Esq., Puisne Judge.
J. COCHRANE, Esq., do.
G. GOWAN, Esq., do. to 6th April, 1826.
W. OLIVER, Esq., do. from 4th May, 1826.

IN 1827.

J. H. D. OGILVIE, Esq., Chief Judge.
F. A. GRANT, Esq., Puisne Judge.
J. COCHRANE, Esq., do.
W. OLIVER, Esq., do.

IN 1828.

J. H. D. OGILVIE, Esq., Chief Judge.
F. A. GRANT, Esq., Puisne Judge.
J. COCHRANE, Esq., do.
W. OLIVER, Esq., do.

IN 1829.

J. H. D. OGILVIE, Esq., Chief Judge, to 19th August 1829.
C. HARRIS, Esq., do. from 20th August 1829.
F. A. GRANT, Esq., Puisne Judge.
J. COCHRANE, Esq., do.
W. OLIVER, Esq., do.

IN 1830.

C. HARRIS, Esq., Chief Judge.
 F. A. GRANT, Esq., Puisne Judge.
 J. COCHRANE, Esq., do. to 28th January, 1830.
 W. OLIVER, Esq., do.
 C. M. LUSHINGTON, Esq., do. from 15th February 1830.

IN 1831.

C. HARRIS, Esq., Chief Judge, to 28th February, 1831.
 W. OLIVER, Esq., do. from 1st March 1831.
 F. A. GRANT, Esq., Puisne Judge.
 C. M. LUSHINGTON, Esq., do. (*on leave from October 1831.*)
 JOHN BIRD, Esq., do. from 28th March 1831.
 W. HUDLESTON, Esq., do. Acting from 26th October, 1831.

IN 1832.

W. OLIVER, Esq., Chief Judge.
 F. A. GRANT, Esq., Puisne Judge, to 19th September 1832.
 C. M. LUSHINGTON, Esq., do.
 JOHN BIRD, Esq., do.
 W. HUDLESTON, Esq., do.

IN 1833.

W. OLIVER, Esq., Chief Judge.
 C. M. LUSHINGTON, Esq., Puisne Judge.
 JOHN BIRD, Esq., do.
 W. HUDLESTON, Esq., do. (*on leave.*)
 T. A. OAKES, Esq., Acting do. from 21st January 1833.

IN 1834.

W. OLIVER, Esq., Chief Judge.
 C. M. LUSHINGTON, Esq., Puisne Judge.
 JOHN BIRD, Esq., do. from 2d June 1834.
 T. A. OAKES, Esq., Acting do.
 W. HUDLESTON, Esq., do. (*on leave.*)
 A. D. CAMPBELL, Esq., Acting do. from 3d February 1834.

IN 1835.

W. OLIVER, Esq., Chief Judge.
 JOHN BIRD, Esq., Puisne Judge.
 THOMAS A. OAKES, Esq., Acting do. to 10th January 1835.
 W. HUDLESTON, Esq., do.
 C. M. LUSHINGTON, Esq., do.
 A. D. CAMPBELL, Esq., do. from 7th December, 1835.

IN 1836.

W. OLIVER, Esq., Chief Judge, to 24th March 1836.
 G. E. RUSSELL, Esq., do. from 25th do. do.
 C. M. LUSHINGTON, Esq., Puisne Judge, (*on leave*).
 JOHN BIRD, Esq., do.
 W. HUDLESTON, Esq., Puisne Judge, (*on leave*).
 A. D. CAMPBELL, Esq., Acting do.

IN 1837.

G. E. RUSSELL, Esq., Chief Judge.
 C. M. LUSHINGTON, Esq., Puisne Judge, (*on leave*).
 JOHN BIRD, Esq., do.
 W. HUDLESTON, Esq., do.
 A. D. CAMPBELL, Esq., do. from 25th May 1837.

IN 1838.

G. E. RUSSELL, Esq., Chief Judge, to 22d January 1838.
 C. M. LUSHINGTON, Esq., do. from 23d January 1838.
 JOHN BIRD, Esq., Puisne Judge.
 W. HUDLESTON, Esq., do. (*on leave*).
 T. A. OAKES, Esq., Acting do.
 A. D. CAMPBELL, Esq., do.

IN 1839.

C. M. LUSHINGTON, Esq., Chief Judge.
 JOHN BIRD, Esq., Puisne Judge, to 29th April 1839.
 W. HUDLESTON, Esq., do. (*on leave*).
 T. A. OAKES, Esq., Acting do.
 A. D. CAMPBELL, Esq., do. from April 1839.
 H. DICKINSON, Esq., do.

IN 1840.

C. M. LUSHINGTON, Esq., Chief Judge, to 27th December 1840.
 JOHN BIRD, Esq., do. from 28th December 1840.
 W. HUDLESTON, Esq., Puisne Judge, to 30th March 1840.
 T. A. OAKES, Esq., Acting do. to 17th February 1840.
 A. D. CAMPBELL, Esq., do.
 H. DICKINSON, Esq., do.
 G. J. CASAMAJOR, Esq., do.

IN 1841.

JOHN BIRD, Esq., Chief Judge.
 A. D. CAMPBELL, Esq., Puisne Judge.

H. DICKINSON, Esq., Puisne Judge.

G. J. CASAMAJOR, Esq., do. from 10th November 1840.

IN 1842.

JOHN BIRD, Esq., Chief Judge.

H. DICKINSON, Esq., Puisne Judge.

G. J. CASAMAJOR, Esq., do. to 17th January 1842.

M. LEWIN, Esq., do. from January 1842.

F. M. LEWIN, Esq., do. from 14th March 1842.

IN 1843.

JOHN BIRD, Esq., Chief Judge.

H. DICKINSON, Esq., Puisne Judge.

G. J. CASAMAJOR, Esq., do. (*on leave.*)

M. LEWIN, Esq., do.

F. M. LEWIN, Esq., Acting do. to 27th December 1843.

A. MACLEAN, Esq., do. do. from 20th March 1843.

IN 1844.

JOHN BIRD, Esq., Chief Judge.

H. DICKINSON, Esq., Puisne Judge.

G. J. CASAMAJOR, Esq., do. to 27th September 1844.

M. LEWIN, Esq., do.

A. MACLEAN, Esq., Acting do.

IN 1845.

JOHN BIRD, Esq., Chief Judge, to 30th June 1845.

H. DICKINSON, Esq., do. from 1st July 1845.

M. LEWIN, Esq., Puisne Judge.

A. MACLEAN, Esq., Actg. do. to 3d January 1845.

G. J. WATERS, Esq., do. from 12th March 1845.

T. E. J. BOILEAU, Esq., do. from 9th July 1845.

IN 1846.

H. DICKINSON, Esq., Chief Judge.

G. J. WATERS, Esq., Puisne Judge, to 19th October 1846.

M. LEWIN, Esq., do. to 17th September 1846.

T. E. J. BOILEAU, Esq., do. to 19th October 1846.

G. S. HOOPER, Esq., do. from 24th November 1846.

E. P. THOMPSON, Esq., do. from 14th October 1846.

W. A. MOREHEAD, Esq., do. from 22d September 1846.

IN 1847.

H. DICKINSON, Esq., Chief Judge.
 G. S. HOOPER, Esq., Puisne Judge.
 E. P. THOMPSON, Esq., do.
 W. A. MOREHEAD, Esq., do.

IN 1848.

H. DICKINSON, Esq., Chief Judge.
 G. S. HOOPER, Esq., Puisne Judge.
 E. P. THOMPSON, Esq., do.
 W. A. MOREHEAD, Esq., do.

IN 1849.

H. DICKINSON, Esq., Chief Judge.
 G. S. HOOPER, Esq., Puisne Judge.
 E. P. THOMPSON, Esq., do.
 W. A. MOREHEAD, Esq., do.

IN 1850.

H. DICKINSON, Esq., Chief Judge, to 17th February 1850.
 J. F. THOMAS, Esq., do. from 18th do. do.
 G. S. HOOPER, Esq., Puisne Judge.
 E. P. THOMPSON, Esq., do.
 W. A. MOREHEAD, Esq., do. absent on a Royal Commission in
 Ceylon from the 19th April to
 1st July 1850.
 A. FREESE, Esq., Acting do. from 19th April to 1st July 1850.

TABLE OF CASES.

	Page.
Akunuri Ganganna	219
Arunachalam	113
Aryachari	73
Banduda and others	169
Bava Sahib	126
Benda, <i>alias</i> Iyempa and others	47
Biranna and others	124
Boyi Kunnigadu.....	220
Chadu Venkataramudu	137
Chakkamalayata Govinna Menon and others.....	66
Chakra and another.....	179
Chella Akki.....	72
Chinna Bidda and another.....	6
Chinnatambu and another	160
Cuppi Nayakan.....	9
D. G. Gopala Chetti and others.....	25
Dasi Nayakan and others.....	61
Dudacula Honnurugadu and others.....	136
Eralla Cheruman Revi Kalladi.....	4
Gandla Gangadu and others	118
Gangaraz Cotamraz and others.....	27
Gedella Ramudu.....	13
Gherimajerow and another.....	54
Govinda Row.....	243
Ilibari Ramudu	9
Inyasi Muttu Shapulan....	198
Kadari Chinna Narasimhadu and others.....	36
Kandali Basavappa	167
Karuttan, <i>alias</i> Valapahnachari and another.	187
Kota Ramudu and others.....	138
Kundappan.....	93
Kuppan and another.....	129
Kuppan and others.....	239
Lakkavarapu Saradhi.....	214
Made Badi.....	21
Madiga Poturazu Karra Tippadu and others.....	227
Mahomed Khan.....	57

	Page.
Mariyamma and another.....	185
Muniyan, <i>alias</i> Munisami.....	241
Murtuza.....	1
Murugalan and another.....	84
Muttan and others.....	202
Muttanna Chari.....	240
Muttu and another.....	49
Nandru Catigadu.....	14
Nanjan.....	215
Padanakaran Bapu.....	107
Palikandi Mamava ..	110
Pallyil Ittiraricha Menon and others.....	159
Pandaratil Kondi Menon and others....	222
Parayan Chatapan and others.....	20
Peddapotu Basavigadu.....	44
Peralli Kesadu.....	34
Perumal and others.....	40
Pindiki Bisayi and another.....	155
Pujari Chinna Nayakan and others.....	58
Ramadattan and others.....	195
Raman Catavarayan.....	27
Ramasami Mudali.....	127
Ramayi and others.....	236
Rangan and others.....	52
Sanara Hari and others.....	22
Sangan and others.....	76
Shamu Ayangur.....	32
Sivaga.....	42
Subbu.....	17
Subramanya Pillay.....	11
Sulabakal.....	132
Thomas.....	208
Timma and others.....	29
Timmareddi and others.....	186
Tippadu and others.....	16
Tiramalai.....	134
Tyakala Nagadu.....	5
Vaidamurthyapille and others.....	204
Velutedata Unni Kutan.....	96
Venganna and others.....	224
Venkatachalam.....	157
Venkataraman and others.....	190
Vuttupulu Somadu and others.....	51
Yedlapati Sivaya.....	24



SELECT REPORTS OF CASES

DETERMINED IN THE

COURT OF FOUDAREE UDALUT OF MADRAS. .

KOTA GOVINDU,

Versus

MURTUZA.

Charge—House-breaking and Theft.

7th July, 1826.

The case of Murtuza.

Prisoner charged with House-breaking and Theft.

Objection raised by the Mahomedan Law Officer to the evidence of two Hindu witnesses, as being inadmissible against a Mahomedan, overruled by a second question propounded under the provisions of Section VIII. Regulation I. of 1825.

Trial referred to the Court of Foudaree Udalt under the provisions of the Regulation above quoted, and the objections taken by the Law Officers of the Court of Circuit to the evidence of the

THE prisoner was tried at Cuddapah at the 1st Quarter Session of the Court of Circuit for the year 1826 on a charge of House-breaking and Theft. He had confessed the crime before the Police and Criminal Court, but pleaded not guilty before the Court of Circuit, and was acquitted by the Mahomedan Law Officer in the first Futwa delivered by him, on the ground that the evidence of two Hindu witnesses, upon which the proof of the charge was considered by that Officer exclusively to depend, was inadmissible against the prisoner who was a Mahomedan. A second question having been propounded by the Judge on Circuit under the provisions of Section VIII. Regulation I. of 1825, the prisoner

NOTE.—This case and the following one have been selected to exemplify the rules in force for overruling technical objections raised by the Mahomedan Law Officers to the evidence of prosecutors and witnesses previous to the enactment of Regulation VI. of 1829.

7th July, 1826.

The case of Murtuza.

witnesses in the case, with another having reference to the fact that the prisoner had pleaded not guilty before the Court of Circuit and that a portion of the stolen property had been restored previous to the commencement of the prosecution, having been overruled by a second question propounded under Clause Fourth, Section II. Regulation XV. of 1803, the prisoner an old offender was sentenced to seven years' imprisonment with hard labour in irons and to receive 30 stripes with a rattan.

was convicted by the Mahomedan Law Officer, and declared liable to discretionary punishment ; Hudd being declared to be barred in consequence of the prisoner having pleaded not guilty before the Court of Circuit; and under the provisions of the Regulation above quoted the trial was referred for the final judgment of the Court of Foujdaree Udalut. The 2nd Judge on Circuit (T. Newnham) did not concur in the opinion of the Mahomedan Law Officer that the proof of the charge depended exclusively upon the evidence of the two Hindu witnesses above mentioned, but considered that it was materially supported by the evidence of other witnesses, some of whom were Mahomedans, and to one of whom the Law Officer objected on the ground that he was under age, and to two others on the ground that they were Police Officers and had apprehended the prisoners. The prisoner being an old offender, the Circuit Judge recommended that he should be sentenced to seven years' imprisonment with hard labour in irons.

The Mahomedan Law Officers of the Court of Foujdaree Udalut in their first Futwa rejected the evidence of the Hindu witnesses for the prosecution for the reason assigned by the Law Officer of the Court of Circuit and declared that, had the evidence of those witnesses been admissible, the prisoner would have been only liable to Tazeer ; Hudd being barred by reason of his denial of the crime before the Court of Circuit and on account of a portion of the stolen property having been restored to the prosecutor, previous to the prosecution.

These objections having been removed by a second question propounded under the provisions of Clause Fourth, Section II. Regulation XV. of 1803, and the prisoner having been declared liable to Hudd, the Court of Foujdaree Udalut (present F. A. Grant, J. Cochrane, and W. Oliver) sentenced him to receive 30 stripes with a rattan and to seven years' imprisonment with hard labour in irons.

PAPUGADU,
Versus
 ILIBARI RAMUDU.
 Charge—Murder.

25th October, 1826.
 The case of Ilibari Ramudu.

The prisoner was tried at Cuddapah at the 1st Session of the Court of Circuit for the year 1826 upon an indictment charging him with having murdered one Narasan, the elder brother of the prosecutor, on the night of the 23d November 1825, by striking him on the head with a pestle.

In the case of a prisoner charged with murder the evidence of three eyewitnesses was rejected by the Mahomedan Law Officer of the Court of Circuit on the ground that they had received blows from the prisoner, that one of them was under age, and that they were all females.

Trial referred to the Court of Foujdaree Udalut and the objections to the evidence of the eyewitnesses to the murder having been removed by a question propounded to the Law Officers of the Court of Foujdaree Udalut under the provisions of Clause Second, Section II. Regulation I. of 1818 the prisoner was sentenced to suffer death.

The circumstances of the case were as follows. The prisoner, who resided in the same village as the deceased, had proceeded, on the night upon which the murder was committed, to the house of a niece of that individual, who had been seduced by him, and with whom he had quarrelled after having lived with her for a time. On his going to the house in question, an angry dispute ensued between the prisoner and the mother of the girl he had seduced, which resulted in his striking the woman, whose younger daughter having summoned deceased to the spot, he remonstrated with the prisoner for having struck a woman, and received from him the blows which caused his death. The three women were the only eyewitnesses to the commission of the murder, but two of the neighbours came up immediately afterwards, and found the deceased lying on the ground insensible.

The Mahomedan Law Officer in his Futwa declared the prisoner to be only convicted of Tohmut-i-Khatl, and to be liable to Ookoo but, rejecting the evidence of the three eyewitnesses of the murder on the ground that they had received blows from the prisoner, that one of them was under age, and that they were all females.

The Judge of Circuit (T. Newnham) dissented from this Futwah, and considering the prisoner to be fully convicted of the

25th October, 1826.
The case of Ilbari Ramudu.

crime charged against him, recommended that he should be sentenced to death.

The Court of Foujdaree Udalut, (present F. A. Grant and W. Oliver) considered that the charge preferred against the prisoner was fully established by the evidence adduced, and having by a question to their Mahomedan Law Officers propounded under Clause Second, Section II. Regulation I. of 1818 removed the technical objection raised to the admissibility of the evidence of the three eyewitnesses above mentioned, convicted the prisoner of the crime of Murder and sentenced him to suffer death.

ERALLA CHERUMAN CHATTAN,

Versus

ERALLA CHERUMAN REVI KALLADI.

Charge—*Murder.*

27th November, 1826.
The case of Eralla Cheruman Revi Kalladi.

The Prisoner was tried at Tellicherry at the 1st Quarter Session of the Provincial Court of Circuit in the Western Division for the year 1826 upon an indictment for having murdered the prosecutor's brother Uni Vellati by striking him on the head with a rice beater. Plea not guilty.

The prisoner was charged with having murdered the prosecutor's brother by striking him on the head with a rice beater.

The prisoner was convicted of the commission of the act charged, but as it appeared that the fatal blow had been struck in the course of an altercation between the prisoner and the deceased, the prisoner having in his hand at the time the instrument of death, and there being no proof of premeditation or previous malice, the crime proved was pronounced to be "Culpable Homicide," and the prisoner was sentenced to five years' imprisonment with hard labour in irons.

It appeared from the evidence of the prosecutor and his younger brother (the only eyewitnesses to the fact who were examined, the mother of the deceased being too ill to attend,) that on the evening, on which the deceased met his death, they and their mother and the deceased were going together from their own to another village to perform a religious ceremony, when they met the prisoner, with whom the deceased fell into an altercation regarding the prisoner having recently quitted the service of the person, with whom they had all previously worked together, and gone to work for another individual. The dispute resulted in the prisoner striking the deceased on the head with a rice beater, which he had in his hand; the deceased fell

27th November, 1826.
The case of Eralla Cheruman Revi Kalladi.

when struck, and neither rose nor spoke again and shortly afterwards, expired; the prisoner fled immediately after striking the deceased, leaving behind him the rice beater, which was recognized by one of the witnesses as belonging to the hut in which the prisoner resided with some other Cherumans.

The Mahomedan Law Officer acquitted the prisoner, rejecting the evidence of the prosecutor altogether, and objecting to that of his younger brother (the only other eyewitness to the commission of the crime, who was examined) on the ground of his youth, and certain variations observable in the several depositions given by him.

The Circuit Judge (J. Stevens) dissented from the Futwa, and considering that the evidence was sufficient to convict the prisoner of the crime of Manslaughter, there being in his opinion no proof of premeditation or previous malice, referred the trial for the final judgment of the Foujdaree Udalut.

The Court of Foujdaree Udalut (present F. A. Grant and J. Cochran) having removed by a second question a technical objection which was raised by their Mahomedan Law Officers to the evidence of the 1st witness, the younger brother of the prosecutor and the deceased, convicted the prisoner of the crime of Culpable Homicide and sentenced him to five years' imprisonment with hard labour in irons.

KAPU GANGADU, AND GOVERNMENT,

Versus

TYAKALA NAGADU.

Charge—Highway Robbery and Escape.

29th March, 1827.
The case of Tyakala Nagadu.

In the case of a prisoner tried upon two charges, the 1st of Highway Robbery by Open Violence, and the 2nd of Escape from Custody after his apprehension on the 1st charge, it was ruled

The prisoner was tried at Cuddapah at the first Session of the Central Provincial Court of Circuit upon two indictments; the first charging him with the crime of Highway Robbery by Open Violence, and the second with having effected his Escape from Custody after his apprehension on the first charge.

The Circuit Judge (T. Newenham) in concurrence with the Mahomedan Law Officer con-

29th March, 1827.
The case of Tyakala
Nagadu.

that the two charges should have formed the subject of two separate trials, and that the "Escape" having been unattended with any of the circumstances of aggravation which would have brought it under the provisions of Clause Fourth, Section V. Regulation VI. of 1822 was cognisable by the Criminal Judge.

victed the prisoner of both the offences laid to his charge and referred the trial for the final judgment of the Foujdaree Udalut recommending that the prisoner should be sentenced to receive thirty-nine stripes with a rattan and to be transported for life.

The Court of Foujdaree Udalut (present F. A. Grant, J. Cochrane and W. Oliver) acquitted the prisoner of the Robbery laid to his charge, and being of opinion that the imprisonment he had already undergone was a sufficient punishment for the Escape of which he was convicted directed that he should be released.

The Court of Foujdaree Udalut remarked that the two separate and distinct charges upon which the prisoner was indicted should have formed the subject of two separate trials, and that the Escape charged against him was cognisable by the Criminal Judge, it having been unattended with any of the circumstances of aggravation which would have brought it under the Provisions of Clause Fourth, Section V. Regulation VI. of 1822.

GOVERNMENT,

Versus

1ST CHINNA BIDDA, 2ND VENKAMMA.

Charge—Attempt to procure Abortion and Murder.

9th July, 1827.
The case of Chinna Bid-
da and another.

Two prisoners in this case were charged, the 1st as an accessory both before and after the fact, and the 2nd as principal, with the murder of a child to which the 1st prisoner

The 1st prisoner was charged with having on a date not specified taken medicine with the intent to procure abortion and with having on the 13th October 1826, wounded a female child to which she had that day given birth with the intent to kill it; and likewise with having caused the 2nd prisoner to throw the said child into water and thereby caused its death.

9th July, 1827.

The case of Chinna Bidda and another.

had given birth; both prisoners being likewise charged with having attempted to procure abortion, the 1st by having taken certain medicine, and the 2nd by having caused the 1st to take the said medicine with that intent.

The prisoners were acquitted by the Court of Foujdaree Udalt, the Court seeing reason to suspect that the charge had been fabricated and considering the evidence to the previous pregnancy and actual delivery of the 1st prisoner to be defective.

It appeared from the record of this case that two persons who were apprehended by the District Police Officer and committed to the Criminal Court on charges connected with that upon which the prisoners in this case were tried, having been released by the Criminal Judge respectively filed suits for damages against the Village Moonsiff the 1st witness in this case one of which actions was decided before the trial of the two prisoners in this case was held.

The Court of Foujdaree Udalt decided that the suits in question ought not to have been proceeded with until the conclusion of the trial of the prisoners in this case, the cause of action being intimately connected with the charge upon which the prisoners in this case were tried, and the release of the Plaintiffs in the said suits by the Criminal Judge not being such

The 2nd prisoner was charged with having caused medicine to be given to the 1st prisoner for the purpose of procuring abortion and with having thrown into water a female child to which the 1st prisoner had given birth with intent to kill it, and thereby caused its death.

The case was tried at Chingleput at the 1st Session of 1826. The Law Officer acquitted the 1st prisoner but convicted the 2nd prisoner. The Judge of Circuit (T. Newnham) considered the evidence sufficient to the conviction of both the prisoners of the offence charged, and referred the case for the final judgment of the Foujdaree Udalt.

The Court of Foujdaree Udalt (present F. A. Grant, J. Cochrane and W. Oliver) acquitted both prisoners on the ground that the evidence on the record appeared to them to warrant a suspicion that the charge against the prisoner originated in a spirit of malice on the part of the Village Moonsiff, the 1st witness for the prosecution; and because they considered that the evidence to prove the previous pregnancy and actual delivery of the 1st prisoner was defective and could not safely be relied on. The Court observed that the testimony of one Patamma, who was stated by the 1st witness to have informed him that Chinna Bidda the 1st prisoner was actually in labor, was of the highest importance; and that it was extraordinary that means were not taken by the Police in the first instance to secure her attendance. The omission also of the Police Officer to cause an inspection of Chinna Bidda's person the Court considered had occasioned another very material defect in the evidence; and even if the conduct of the Village Moonsiff had been less open to suspicion, the Court would have hesitated to

SELECT REPORTS OF CASES IN THE

9th July, 1827.

The case of Chinna Bid-
da and another.

a complete termination of the proceedings against them as to entitle them to recover damages for the false accusation which they alleged had been preferred against them.

The Court of Foujdaree Udalt observed that the admission by the Civil Courts of suits instituted under such circumstances previous to the complete determination of the Criminal prosecution out of which they arose was calculated to obstruct the administration of Criminal justice.

convict the prisoners of the crime laid to their charge.

It appeared from the record of this case that on information given by the 1st witness, the District Police Officer apprehended and sent up to the Criminal Court two persons named Pedda Kachaya and Chinna Kachaya on a charge of having attempted to prevail on the Village Moonsiff to suppress his report of the two offences alleged to have been committed by the two prisoners in this case. Pedda Kachaya was also charged with having administered medicine to the 1st prisoner for the purpose of procuring an abortion. These two persons were released by the Criminal Judge, and it appeared that they im-

mediately afterwards sued the Village Moonsiff in the Zillah Court for damages. It also appeared that one of these two actions was decided before the trial of the two prisoners in this case was held.

Upon this the Court of Foujdaree Udalt remarked that although it could not be denied that the individuals in question had good cause for action, if they were prepared to prove that the accusation against them originated in malice, and was without probable cause, and that the proceedings against them had terminated, it appeared to the Court to be extremely doubtful whether their release by the Criminal Judge could be considered such a termination of the proceedings against them as to entitle them to recover damages for the false accusation; it being competent to the Judge of Circuit holding the Sessions immediately after the release of these two individuals, under the provisions of Section XXIII. Regulation X. of 1816 to direct a further inquiry into the accusation against them, which inquiry might have led to their conviction and committal for trial; and it being possible that on the trial of Chinna Bidda and Venkamma evidence might have appeared to warrant the presiding Judge in directing the revival of the proceedings against Pedda Kachaya. Under these circumstances the Court were of opinion that the actions instituted by these two persons ought not to have been proceeded with, and at all events that the plaintiffs could not be prepared to show what was requisite to en-

9th July, 1827.

The case of Chinna Bid-
da and another.

title them to a judgment, until the final conclusion of the trial under the consideration of the Court.

In another point of view this proceeding of the Zillah Judge appeared to the Court to be more clearly objectionable; the charge against Pedda Kachaya and Chinna Kachaya was intimately connected with that against Chinna Bidda and Venkamma, and the evidence in support of the former was collaterally, and in some points directly, material to the issue of the latter; so that a judgment in favor of the plaintiff in the civil action must have been founded on evidence, which went strongly to, if it did not entirely, destroy the credit of some material witnesses for the prosecution against Chinna Bidda and Venkamma, and the issue of that prosecution was thus indirectly prejudiced in a certain degree. "If," the Court observed, "actions of this nature are allowed to proceed before the determination of the prosecution out of which they arose, or with which they are so intimately connected as in the present instance, it is to be apprehended that they will often be had recourse to for the purpose of invalidating indirectly and beforehand the evidence to be adduced on the trial of the principal charge, and it is impossible to foresee to what extent the administration of criminal justice might be embarrassed and obstructed if such underhand proceedings were countenanced by the Civil Courts."

The foregoing remarks, the Court of Foujdaree Udalt ordered to be communicated to the Zillah Judge of Chingleput.

GOVERNMENT AND ARUMUGAM,

Versus

CUPPI NAYAKAN.

Charge—Abuse of Authority and Murder.

26th July, 1827.

The case of Cuppi Na-
yakan.

The prisoner was tried in case No. 8, of the Madura Calendar at the 1st Session of 1827 on a charge of having at about noon on Saturday

26th July, 1827.

The case of Cuppi Nayan.

the 1st July 1826, on the occasion of one Palani and the prosecutor Arumugam having been apprehended on suspicion of having passed counterfeit coin, tied their arms behind their backs and kept them in that state till the next forenoon, and in consequence occasioned the death of the said Palani on the 6th July, and the loss of the right arm of the prosecutor by mortification.

The prisoner, a Police Peon, was charged with "Abuse of Authority and Murder" in having kept two prisoners under his custody with their arms tied behind their backs for a whole night and a portion of the following day, and thereby occasioned the death of one of them and the loss of the right arm of the other by mortification.

The prisoner was a Police Peon in charge of the Police Chowky in the Village of Palamattu. The Law Officer acquitted the prisoner of the offence charged. The Circuit Judge (J. Bird) on the other hand considered it fully established that on the occasion in question the prosecutor and the deceased were detained in confinement under the order of the prisoner, that they were kept with their arms bound behind them for the whole of the night with his knowledge and concurrence, that the death of the deceased Palani and the loss of the prosecutor's right arm were occasioned in consequence of the ligatures applied to them, and that, whether the ligatures were applied by the prisoner himself or by another person, (which the Circuit Judge did not consider to be clearly established), he was, under the circumstances proved in evidence, clearly responsible for the consequences which ensued. As a ground for mitigating the punishment to which the prisoner had rendered himself liable, the Circuit Judge observed that it was clear the prisoner was not aware of the consequences which might ensue from the treatment to which the deceased and the prosecutor were subjected, and that from the evidence of the Zillah Surgeon, under whose treatment the deceased and the prosecutor had been placed, there were reasonable grounds for the conclusion that, if the arms of the deceased had been properly treated at first, death would not have ensued.

The prisoner was convicted by the Court of Foujdaree Udalut of gross Abuse of Authority and sentenced to receive 20 stripes with a rattan and to be imprisoned with hard labor in irons for five years.

The Court of Foujdaree Udalut (present F. A. Grant, J. Cochrane and W. Oliver) concurred with the Judge in Circuit in convicting the prisoner of gross abuse of authority, and sentenced him to receive 20 stripes with a rattan and to be imprisoned and kept to hard labor in irons for the period of five years.

26th July, 1827.

The case of Cuppi Nayakan.

Incommunicating their sentence the Court of Foujdaree Udalut directed it should be publicly promulgated in the district, in which the offence had been committed, as a warning to the Native Police Officers.

The Court of Foujdaree Udalut observed
 “ that adverting to the flagrant breach of their
 “ repeated instructions shown in this case, and
 “ to the fatal consequences arising from it, they
 “ would not permit their sentence to go forth,
 “ without directing that the Magistrate of the
 “ Zillah in which the act took place should
 “ give every publicity to its promulgation;
 “ in order that the attention of every Native
 “ Police Officer within his jurisdiction might be attracted to the
 “ issue of the trial.”

GOVERNMENT,

Versus

SUBRAMANYA PILLAY.

Charge—*Perjury*.

18th August, 1827.

The case of Subramanya Pillay.

The prisoner was charged in case No. 12 of the Combaconum Calendar at the 1st Session of 1827 with having committed Perjury in his examination as a prosecutor on the trial of Muttuverapillay and Narayanasami for the forgery of a bond purporting to have been executed by him to the said Muttuverapillay.

It was an established rule that in a trial for Forgery the person, by whom the alleged forged instrument purports to have been made, is not a competent witness to prove it forged, and should not be examined in the trial.

The fact however of a person having been improperly examined as a witness does not relieve him from liability for a prosecution for perjury.

The Judge, before whom the trial above referred to was conducted, considered the execution of the bond in question by the prisoner in this case to have been clearly established, and accordingly directed his commitment on a charge of Perjury.

The Law Officer acquitted the prisoner, but the Judge on Circuit (J. Bird), being of opinion that the offence charged was clearly established, referred the trial for the final judgment of the Foujdaree Udalut, with a recommendation that the prisoner should be sentenced to the full amount of punishment prescribed by Law.

In this conviction the Court of Foujdaree Udalut (present F. A. Grant, J. Cochrane and W. Oliver) concurred, and sentenced the

18th August, 1827. prisoner to be publicly exposed in the mode
 The case of Subraman- commonly denominated "Tasheer" and to be
 nya Pillay. imprisoned and kept to hard labor in irons for
 the period of seven years.

In passing their sentence the Court of Foujdaree Udaltut remarked that it was an established rule that in a prosecution for Forgery the party, by whom the instrument purported to have been made, was not a competent witness to prove it forged, if he would either be liable to be sued upon the instrument, supposing it genuine; or be thereby deprived of a legal claim against another person; that in this case the objection to Subramanyapillay's competency could not be removed by a release, because the bond purported to be made to, and was held by, one of the persons tried for forging it; and that it was therefore evident that he ought not to have been examined on that trial.^a

It became a question therefore, the Court remarked, whether Subramanyapillay, not being a competent witness to prove the Forgery, but having been examined on the trial by mistake or inadvertence, was liable to a prosecution for Perjury in his examination; and the Court having had recourse to the best information within their reach satisfied themselves that he was liable.

"In the present instance," it was observed, "the question, as it affected the prisoner, was of little importance, because, if he had been entitled to an acquittal on the trial for Perjury, he would still

NOTE.^a—These observations appear to have been founded upon the rule of English Law in regard to the evidence receivable in support of prosecutions for Forgery, which rule however has been rescinded by 9 Geo. 4—C. 32—S. 2, whereby it was enacted that "no person shall be deemed an incompetent witness in support of any such prosecution by reason of any interest which such person may have, or be supposed to have, in respect of such deed, writing, instrument, or other matter."

The rule in question was certainly in accordance with the general principles of the Mahomedan Law of evidence; but, as has already been stated in the preface of this work, the Judges of the Foujdaree Udaltut considered the provisions of Regulation I. of 1818 to release them from the obligation of observing the Mahomedan Law of evidence, and why therefore they should have laid down for the guidance of the Lower Courts a rule so obviously calculated to produce inconvenience and in many instances to interfere with the just punishment of crime, it seems difficult to understand.

The rule referred to is now never acted on.

18th August, 1827.
The case of Subrama-
nya Pillay.

“ have been liable to a prosecution for Subor-
“ nation of Perjury, and must have been convict-
“ ed and sentenced to the same punishment.”

CHENDARI SITA,

Versus

1. GEDELLA RAMUDU,
2. TIRUMANEDI VENKAYA,
3. TIRUMANEDI SITARAMUDU,
4. JANAPALA RAMUDU,
5. GEDELLA APPAYA,
6. CORANDA APPAYA.

11th May, 1829.

The case of Gedella Ramudun and five others.

A Committing Officer should not put questions to an accused person requiring him to give an account of himself, without at the same time distinctly informing him that it is optional with him to answer them or not.

The prisoners were tried at Chicacole before the 2nd Judge on Circuit at the 1st Session for 1828 upon an indictment charging them with having murdered Chunduri Appamia, husband of the prosecutrix, on the evening of the 25th December 1827, by stabbing him with a case knife in a field near the village of Pedda Jerame.

The Circuit Judge (J. O. Tod) considered the evidence sufficient for the conviction of all the prisoners charged, and recommended that the 1st prisoner should be sentenced to death and the other prisoners to transportation for life.

The Court of Foujdaree Udalut (present J. Cochrane and W. Oliver) observed that the conviction or acquittal of the prisoners depended entirely upon the degree of credit attached to the evidence of the 4th witness, who deposed to having witnessed the commission of the murder; and the Court of Foujdaree Udalut being of opinion that, though there were several collateral circumstances strongly tending to corroborate the testimony of that witness, it would be dangerous to found a conviction upon it, directed that the prisoners should be placed under a requisition of security.

In the account contained in the deposition given by the 1st prisoner before the Magistrate and Criminal Judge the Court of Foujdaree Udalut were of opinion that there was much to ex-

11th May, 1829.
The case of Gedella Ramudu and five others.

cite suspicion, but they considered the manner in which that account was obtained from him, viz. by questions put to him by the committing Officer, to have been extremely objectionable.

The Court observed that "questions ought not to be put to an accused person, requiring him to give an account of himself, unless he is at the same time distinctly given to understand that it is optional with him to answer them or not" and that by such a proceeding "even an intelligent and innocent man might unconsciously be led into a disclosure of circumstances, which, coupled with other facts appearing in evidence, might be assumed as conclusive of his guilt."

A prisoner, "the Court remarked," after his answer to the charge "may properly be asked whether he has any thing further to say, but there the committing Officer should stop."

GOVERNMENT,

Versus

1. NANDRU CATIGADU,
2. PUMACANTI CHINTADU,
3. VALPULI PEDDA CATIGADU,
4. VALPULI CHINNA CATIGADU.

Charge—Murder.

21st January, 1830.
The case of Nandru Catigadu and three others.

The prisoners in this case, charged with Murder, confessed the crime before the Police and Criminal Court, but, having retracted their confessions before the Court of Circuit, were acquitted by the Court of Foujdaree Udalt on the ground that there was no proof of the "Corpus delicti;" there being no evidence to prove the death of the persons with whose murder the prisoners were charged.

The prisoners were tried at Masulipatam before the Court of Circuit in the Northern Division at the 3d Session of 1829; the 1st and 2nd prisoners being charged with having murdered one Baduga Pakkiru, his wife Venkama, and their infant son Achigadu, and the 3rd and 4th prisoners with having been accessory to the Murder in assisting them to carry away and conceal the bodies of the deceased.

The prisoners were stated to have been apprehended in consequence of the discovery of certain human bones in the bed of a tank in the village to which they belonged, which was reported by the Moonsiff and Curnum of the vil-

21st January, 1830.
The case of Nandru
Catigadu and three
others.

With reference to certain articles found on the prisoners, which were stated in their confessions to have been taken from the bodies of the persons said to have been murdered, the Court of Foudaree Udalut decided that there was no proof that the articles in question belonged to the said persons, and that, even if there had been, the possession of them by the prisoners would not of itself warrant the inference that they had been obtained by murder.

lage to the Head of District Police, to whom, on his arrival at the spot, the villagers were said to have denounced the prisoners as the perpetrators of the murders of the deceased Baduga Pakkiru his wife and child. The prisoners on being apprehended confessed the crime, stating that they were actuated to commit it in consequence of certain deaths having occurred in their families which they attributed to sorceries practised by the deceased. They likewise delivered up jewels stated to have been found on the persons of the deceased when the murder was committed. Their confessions were repeated by them before the Criminal Court, but retracted before the Court of Circuit. The Circuit Judge (S. Money) in concurrence with the Law Officer

convicted the prisoners of the crime charged, and referred the trial for the final judgment of the Foudaree Udalut.

The Court of Foudaree Udalut (present F. A. Grant, J. Cochran and W. Oliver) considered the evidence insufficient to the conviction of the prisoners and ordered their release.

The Court of Foudaree Udalut observed there did not appear any evidence on the trial to prove the death of the persons with whose murder the prisoners were charged, nor a single circumstance from which it could be presumed that they were dead; much less that they had met with a violent death.

The evidence adduced to show that certain articles had been found on the prisoners the Court of Foudaree Udalut considered to have been rendered nugatory by the total absence of proof that those articles belonged to the persons said to have been murdered; and even if it had been proved that the articles in question actually belonged to those persons, the Court were of opinion that the possession of them by the prisoners would not of itself have warranted the inference that they had been obtained by murder. Under these circumstances the confessions made by the prisoners before the Joint Criminal Judge were pronounced by the Foudaree Udalut to be insufficient to their conviction.

The Court of Foudaree Udalut further remarked that no evidence had been adduced on the trial to the discovery of the skull

21st January, 1830.
The case of Nandru
Catigadu and three
others.

and bones said to have been discovered by the Vetty man of the village, nor was it shown in the proceedings upon what ground the prisoners were apprehended; the statement contained in the letter of the Circuit Judge referring the trial, to the effect that "the circumstances of the death of Baduga Pakkiru his wife and child had transpired among the villagers," not being supported by any evidence in the record.

GOVERNMENT,

Versus

TIPPADU, RAMAPPA NAYADU, AND RAGADU.

Charge—Highway Robbery.

15th April, 1830.
The case of Tippadu
and two others.

To give effect to a confession, even where there is no reason to suppose that it has been influenced by fear, or otherwise improperly obtained, it is indispensably necessary that there should be presumptive evidence at least that the crime charged has been actually committed.

The prisoners were tried before the Court of Circuit in the Centre Division at Chittoor on a charge of having, on a date unknown, attacked certain travellers in the pass of Sagenagunta and robbed them of property, the value of which was unknown. The 3rd prisoner was indicted as an accessory to the said Highway Robbery.

The evidence against the prisoners rested on confessions made by them before the Magistrate of North Arcot, on the discovery in the possession of Tippadu of jewels supposed to have been part of the plundered property, and on the evidence of one witness who deposed to the prisoners having on a certain occasion requested him to accompany him to the pass of Sagenagunta and to aid them in the commission of certain robberies they were about to perpetrate. The prisoners Tippadu and Ramappa Nayadu were convicted by the Circuit Judge (G. W. Saunders) in concurrence with the Mahomedan Law Officer and sentenced to imprisonment with hard labor in irons, the former for fourteen, and the latter for four years.

The prisoner Ragadu having been subsequently apprehended and committed for trial on the charge of having been concerned in the same robbery, and the Court of Foujdaree Udalut having called for the proceedings held in the trial of Tippadu and Ramappa Nayadu

15th April, 1830. ^{Proceedings in both trials were transmitted for the}
 The case of Tippadu ^{final judgment of the Foujdaree Udalut.}
 and two others.

The Court of Foujdaree Udalut (present F. A. Grant and W. Oliver) considered the evidence altogether insufficient for the conviction of any of the prisoners charged, and directed that Tippadu and Ragadu (Ramappa Nayadu having died in Jail) should be unconditionally released.

The Court of Foujdaree Udalut observed that the prisoners should not have been put upon their trial; there being in the opinion of the Foujdaree Udalut not a tittle of evidence that the robbery charged against them had ever been actually committed. The Court remarked that there was nothing in the proceedings to show why the prisoners were taken into custody, that upon two of them, Ramappa Nayadu and Ragadu, not a single article was found, supposed to have been obtained by robbery, while the articles found upon Tippadu, the other prisoner, were not only such as he might reasonably be supposed to possess, but were actually proved to have been his own property.

In regard to the grounds upon which the prisoners were convicted by the Judge of Circuit, viz., their confession before the Magistrate, the Court of Foujdaree Udalut observed that to give effect to a confession, even when there is no reason to suspect that it was influenced by fear or otherwise improperly obtained, it is indispensably necessary that there should be presumptive evidence at least that the crime charged was actually committed.

GOVERNMENT,

Versus

SUBBU.

Charge—*Perjury*.

22nd July, 1830.
 The case of Subbu.

The prisoner was tried before the Court of Circuit at Cuddapah at the 1st Session of 1830 upon an indictment charging her with Perjury, in having given two contradictory depositions upon oath before the Criminal Judge of Cuddapah and the Judge of Circuit in a case of

22nd July, 1830.
The case of Subbu.

The prisoner in this case was tried for Perjury, and was acquitted by the Court of Foujdaree Udalut on the ground that no evidence had been adduced to prove that she had been duly sworn, before she gave either of the depositions, in one of which the Kerjury charged against her was alleged to have been committed, or that the contents of the said depositions had been duly read over to her before she signed them: proof of both which facts is indispensable in a trial for Perjury under the provisions of Clause Second, Section II, Regulation III. of 1826.

murder in which she was examined as a witness.

The indictment set forth that the prisoner Byreddi alias Codasami Subbu, appearing as a witness in case No. 91 of the Criminal Calendar before the Acting Criminal Judge of Cuddapah, wherein Codavala Naru was charged with having murdered the prosecutor's granddaughter, named Papa, aged 5 years, by strangling her, and being, on the 6th July 1829, answering to Virodhi year Jyesta Shudha 5th, duly sworn before the said Acting Criminal Judge to depose truly to all matters of fact within her knowledge touching the said case, did wilfully and deliberately depose in words to the following effect. "I did not see who killed Papa, but about ten days ago I had gone out to grind candulu and returned home at mid-day; at that time the prisoner

Naru came to my house and was spinning thread in my house, when the deceased Papa's mother and others were weeping because they could not find the child, on which the prisoner Naru asked me why they wept, and I told her because they could not find the child Papa. The prisoner then said "I have done without knowing;" and when I asked what she had done, she threw herself at my feet and said she had strangled the prosecutor's granddaughter Papa. I asked her where she had put it; she said, in a bundle of cotton that was in my house. I asked the prisoner why she had brought it into my house; she said she would take it away. I told them (the Reddies and Curnums) of this the next day, when they took me to the guard house;" and afterwards on the 2nd day of January 1830 answering to Virodhi year Purshya Shudha 8th, being duly sworn before the Court of Circuit in like manner to depose truly to all matter of fact within her knowledge touching the said charge against Codavala Naru, did wilfully and deliberately depose in words to the following effect—"I do not know any thing. I did not see the prisoner. Nobody came weeping or caused a mob of people (on the day Papa was killed). I did not speak to the prisoner nor did the prisoner speak to me when I returned from grinding candulu to my house. I did not see any body there. I and my

22nd July, 1830.

The case of Subbu.

children only were there ;” and that the said two depositions being in direct and positive contradiction, one of the other, as to the matter of fact so wilfully and deliberately deposed to, on the two dates above specified ; and one of the said depositions being therefore false and corrupt ; and the said matter of fact being material to the issue of the charge then pending against the said Codavala Naru, the said Byreddi Subbu was guilty of wilful and corrupt perjury in one or other of the said depositions.

The commitment of the prisoner on the foregoing charge was directed by the Judge on Circuit, by whom the charge of murder referred to had been tried.

On the trial the writer of the deposition given by the prisoner before the Criminal Judge was examined ; depositions being likewise taken from two witnesses who attested the prisoner’s deposition before the Court of Circuit.

The Law Officer acquitted the prisoner on the ground that only one witness had proved the deposition given by the prisoner before the Acting Criminal Judge ; but in this verdict the Judge on Circuit (T. A. Oakes) did not concur, and, considering the crime charged to have been fully established, referred the trial for the final judgment of the Foujdaree Udalt with a recommendation that the prisoner should be sentenced to seven years’ imprisonment with hard labor without irons.

The Court of Foujdaree Udalt (present F. A. Grant and W. Oliver) acquitted the prisoner on the ground that no evidence had been adduced to prove that she had been duly sworn, before she gave either of the depositions, in one of which the perjury charged against her was alleged to have been committed, or that the contents of those depositions had been distinctly read over to her before she signed them ; proof of both which facts, the Court observed, was indispensable under the provisions of Clause Second, Section II. Regulation III. of 1826. These omissions the Court observed were fatal to the conviction of a prisoner charged with the crime of perjury under the Regulation above quoted.

The Court of Foujdaree Udalt accordingly directed that the prisoner should be released.

KODASHERI AWARAN KUTTI.

Versus

1. PARAYAN CHATAPAN.
2. PARAYAN CHENEN.
3. PARAYAN KUNDAYAR.

Charge—*Murder.*

12th August, 1830.

The case of Parayan
Chatapan and others.

The prisoners in this case, charged with having by means of Sorcery committed a Rape upon the prosecutor's wife, who was then in the tenth month of her pregnancy, beat or otherwise ill-treated her, and with having taken the child out of her womb and introduced into it in lieu thereof the skin of a calf and an earthen pot, and thereby caused her death, were acquitted by the Court of Circuit, notwithstanding that they had confessed before the Police the commission of the acts charged against them, on the ground that the earthen pot referred to was of a size that rendered it impossible to credit its introduction during life; and in this verdict the Court of Foujdaree Udalut concurred.

This trial was held at Calicut on the 20th of January 1830 at the 1st Session of the Court of Circuit in the Zillah of Malabar, when the prisoners were arraigned upon an indictment, charging them with having on the night of the 1st October 1829 proceeded in company with one Parayan Kurumban (not apprehended) to the house of the prosecutor, with having by means of sorcery brought out of the house the prosecutor's wife Patuma, who was then in the tenth month of her pregnancy, taken her to the southern yard thereof, held forcible connexion with her, beat or otherwise ill-treated her, and afterwards with having taken the child out of her womb, and introduced into it, in lieu thereof, the skin of a calf and an earthen pot; in consequence of which ill-treatment the said Patuma died on the following day.

It appears from this trial and from others which have come before the Court of Foujdaree Udalut that the inhabitants of Malabar believe the Paraya slaves there to possess the power of Sorcery, whereby they are enabled to conjure from the womb the living fœtus and to perpetrate Murder and Rape in a manner not liable to discovery.

In this case the prisoners were made to confess before the Police the commission of the several acts charged against them in the indictment; and on their attested confessions, corroborated by the discovery in the womb of the deceased of an earthen pot and a

12th August, 1830.
The case of Farayan
Chatapan and others.

picce of calf's skin, were committed for trial before the Court of Circuit (W. O. Shakespear), by which tribunal they were acquitted principally on the ground that the earthen pot referred to was of a size that rendered it impossible to credit its introduction during life.

The record of the case having been called up by the Court of Foujdaree Udalut, the Court (present F. A. Grant and W. Oliver) recorded their approval of the verdict of the Circuit Judge.

GOVERNMENT,

Versus

MADE BADI.

Charge—Forcibly driving away Cattle.

14th February, 1831.
Made Badi's case.

Session of 1830 the

It was ruled in this case that the act of an armed gang forcibly robbing a person of his cattle could not be considered a case of Cattle-stealing punishable by the Circuit Judge under the provisions of Clause Fourth, Section III. Regulation VI. of 1822 but must be disposed of as a case of Robbery by Open Violence under Clause Fourth, Section IV. Regulation XV. of 1803.

In the remarks recorded by the 1st Judge on Circuit in the Northern Division (G. Garrow) upon case No. 5 Rajahmundry Calendar 2nd Scsion of 1830 the question was propounded "whether driving away cattle came under the character of Gang Robbery," and in a separate letter, the 1st Judge recommended that the punishment adjudicable against the prisoner should be mitigated to seven years' imprisonment in the event of the question being determined by the Court of Foujdaree Udalut in the affirmative.

It appeared that the prisoner Made Badi was one of a gang who came to the jungle near a village called Mundegudam at about 12 o'clock A. M., armed with matchlocks, bows and sticks and carried away therefrom thirty-seven buffaloes, the property of the prosecutor.

The Court of Foujdaree Udalut (present F. A. Grant, W. Oliver and C. M. Lushington) observed that in order to determine on the case of the prisoner it was not necessary to resolve the question whether or not the driving away cattle from a jungle is Gang Robbery, the weapons with which the gang were armed and the mau-

14th February, 1831.

Made Bada's case.

ner in which they conducted themselves on the occasion of their committing the offence charged against them leaving no reasonable doubt that their object was Robbery by Open Violence; and it being obvious therefore that, if they had not forcibly driven off the buffaloes, the prisoners still would have come within the provisions of Clause Fourth, Section IV. Regulation XV. of 1803.

Adverting to an observation of the Judge on Circuit in the 6th para. of his letter that, if the case "be deemed to be Cattle-stealing" "it might have been disposed of by the Criminal Judge under "Clause Fourth, Section III. Regulation VI. of 1822,"—the Court of Foujdaree Udalut deemed it proper to point out that the act of an armed gang forcibly robbing a person of his cattle could not be considered a case of Cattle-stealing punishable by the Criminal Judge.

On consideration of all the circumstances of the case the Court of Foujdaree Udalut sanctioned the sentence of seven years' imprisonment with hard labor in irons proposed by the 1st Judge on Circuit to be passed upon the prisoner Made Badi.

GOVERNMENT,

Versus

1. SANARA HARI,
2. SANARA RUGGU,
3. SANARA VASUDEYU,
4. SANARA COMULA,
5. SANARA CHEYTUNU.

Charge—Murder and Wounding.

15th February, 1831.

The case of Sanara Hari and others.

No inquest having been held upon the body of a person whom the 1st prisoner in this case was charged with having murdered, although the Head of Police was at the time

The prisoners were tried at Chicacole before the Circuit Court at the 1st Session of 1830 charged, the 1st prisoner with having on or about the 2nd November 1829 in a jungle near Bujabhadra murdered a woman named Gunji by cutting off her head, the 2nd prisoner with having at the same time and place wounded a man named Vurdavadu with an arrow, and the

15th February, 1831.

The case of SanāraHarī and others.

in the vicinity of the place where the murder was alleged to have been committed, the Court of Foujdaree Udalt observed on the omission of the Head of Police as being in contravention of Section XXXVI. Regulation XI. of 1811.

3rd, 4th and 5th prisoners with having been present aiding and abetting in the above acts.

Plea not guilty.

It was stated in evidence that on the day previous to that on which the murder and wounding recited in the indictment were alleged to have been committed, certain Dandassies of Patrapuram, among whom were several of the witnesses and others concerned in the case, were going according to their custom to cut wood in the jungle of Mandiyagundu, when, on the way thereto, they were met by the prisoners and some other individuals who warned them against cutting wood in the jungle in question; that the next day the deceased, her husband who was wounded, the 4 first witnesses for the prosecution, and some other persons went there again, and while they were cutting wood, the prisoners, with Swami Goundan, the Dewan of the Raja of Joroda, at their head, came upon them, armed with matchlocks, swords and other weapons; that an altercation ensued, in the course of which an arrow was discharged, which wounded the husband of the deceased on the thigh; that upon seeing her husband wounded, his wife cried out, whereupon the 1st prisoner made a stroke at her neck with a sword, but finding that his weapon was blunt took up a billhook, which had been dropped by the deceased's husband, and with it severed her head from her body; the 2nd prisoner at the same time cutting off one of her hands.

The Law Officer in his Futwa convicted the 1st and 2nd prisoners of having murdered the deceased, acquitting the 3rd, 4th and 5th prisoners.

The Judge on Circuit (S. Money) concurred in the Futwah, and directed that the 3rd, 4th and 5th prisoners should be released, the 3rd prisoner on security, and 4th and 5th unconditionally; and the trial was referred for the final judgment of the Foujdaree Udalt with a recommendation that the 2nd prisoner should be sentenced to transportation for life; the 1st prisoner having died in Jail before the trial was referred.

The Court of Foujdaree Udalt considered the evidence insufficient to the conviction of any of the prisoners charged, and they

15th February, 1831.

The case of Sanara Hari
and others.

accordingly directed that the 2nd prisoner should be released, and cancelled the requisition of security under which the 3rd prisoner had been placed.

The Court of Foujdaree Udalt (present F. A. Grant and W. Oliver) considered that the charge had been insufficiently investigated, and that the proof was defective in regard to the actual death of the deceased. The Court of Foujdaree Udalt particularly observed that no inquest had been held upon the body of the deceased, although the Head of Police was at the time in the vicinity of the place where the murder was alleged to have been committed, and was therefore bound under Section XXXVI. Regulation XI. of 1811 to proceed immediately to the spot and hold an inquest on the body.

GOVERNMENT,

Versus

YEDLAPATI SIVAYA.

Charge—Murder.

15th February, 1831.

Yedlapati Sivaya's case.

The prisoner was tried at Guntoor before the Court of Circuit at the 2nd Session for 1830 charged with the murder of Yedlapati Jellam-raz his adoptive father. Plea not guilty.

The Circuit Judge who tried this case having stated in his letter of reference his opinion that the prisoner, who was charged with murder, was insane when he committed the act charged against him, and that his appearance when placed at the bar was also indicative of insanity, the Court of Foujdaree Udalt observed that under the Circular Order of the 1st June 1829 the trial should not have been proceeded with, and directed the Circuit Judge to take the opinion of the European Medical Officer as to whether or not the prisoner was a fit ob-

The Judge on Circuit (G. Garrow) considered it clearly proved that the prisoner had killed the deceased and referred the trial for the final judgment of the Foujdaree Udalt.

In the letter accompanying the trial the Judge on Circuit stated his opinion, formed upon a consideration of the circumstances of the case, that the prisoner was insane at the time when he committed the act charged against him, and that his appearance when placed at the bar before the Court of Circuit was also indicative of insanity.

The Court of Foujdaree Udalt (present F. A. Grant, W. Oliver, and C. M. Lushington) observed that under these circumstances the Circu-

15th February, 1831.

Yedlepati Sibaya's
case.

ject for confinement in the Lunatic Asylum at Madras, and eventually to detain the prisoner in confinement or forward him to the Superintendent of Police at Madras.

lar Order of the Court of Foujdaree Udalut dated the 1st June 1829 was strictly applicable to the case, and that the 1st Judge on Circuit ought not to have proceeded with the trial of the prisoner.

The Court of Foujdaree Udalut accordingly directed that the Judge on Circuit should order the Acting Criminal Judge to take the opinion of the European Medical Officer attached to the Court as to whether or not the prisoner was a fit object for confinement in the Lunatic Hospital at Madras, and eventually to detain the prisoner or forward him to the Superintendent of Police at Madras.

GOVERNMENT,

Versus

D. G. GOPALA CHETTI AND OTHERS.

Charge—Resistance to Magistrate's Process.

11th May, 1831.

The case of D. G. Gopala Chetti and others.

In this case, in which certain persons were charged with resistance to a magisterial process, the Court of Foujdaree Udalut observed that under the provisions of Clause first, Section XVIII. Regulation IX. of 1816 it was not competent to a Magistrate to issue a proclamation affecting any individual, whose resistance to his process was not charged upon oath.

The Court of Foujdaree Udalut likewise observed that under Clause first, Section XVIII. Regulation IX. of 1816 the Magistrate was bound to pass a judgment in the case of resistance to his process and to report the same for the final confirmation

The Magistrate in the Southern Division of Arcot (B. Cunliffe,) on the 7th December 1830, reported to the Court of Foujdaree Udalut the circumstance of a case of resistance to Magisterial process, in which he had deemed it proper to order attachment of the property of the offenders according to the provisions of Regulation IX. of 1816 ; and in a subsequent communication, in reply to a requisition from the Foujdaree Udalut for a detailed statement of the evidence against each of the persons specified, and of a translation of the proceedings, recommended that to the principal offender a fine of 1,500 Rupees, commutable to imprisonment for twelve months, and to the remainder fines of Rupees 50, commutable to imprisonment for one month, should be adjudged ; they having failed to appear within the period fixed in a proclamation issued under Section XVIII. of the above Regulation.

11th May, 1831.

The case of D. G. Gopala Chetti and others.

of the Court of Foudaree Udalut; the mere reference of his proceedings for the orders of the Court, without having passed any judgment whatever, being irregular.

Upon these proceedings the Court of Foudaree Udalut (present F. A. Grant and J. Bird) remarked that under the provisions of Clause first, Section XVIII. Regulation IX. of 1816 it was not competent to the Magistrate to issue a proclamation affecting any individual whose resistance to his process was not charged upon oath.

The only persons, who appeared to have been examined on oath in the case under notice previously to the date upon which the proclamation was issued, were Noor Mahomed, Narayana Nayakan, Ramasami, and Sashachella Nayakan, none of whom gave evidence against any of the persons, whose names were contained in the proclamation above-mentioned, with the exception of D. G. Gopala Chetti, the ringleader in the case, for whose appearance only the Magistrate was authorized to issue the proclamation.

The proceedings against the other individuals having been irregular were therefore set aside by the Court of Foudaree Udalut.

The Court of Foudaree Udalut observed another irregularity in this case, which they considered to be deserving of notice.

The Court remarked that Clause first Section XVIII. Regulation IX. of 1816 prescribed that, if the party charged with resistance "cannot be apprehended, and shall not within the period fixed by "proclamation appear to answer the charge against him, or if he "shall be apprehended or shall appear in pursuance of the proclamation, and, after receiving his answer to the charge and hearing the evidence he may adduce in his defence, it shall be proved "to the satisfaction of the Magistrate that he is guilty of the "charge, the Magistrate is to pass judgment against him in the "following manner" and the second, third and fourth clauses of the Section prescribe the judgment to be so passed on different descriptions of persons.

In this case the Magistrate passed no judgment whatever, but merely referred his proceedings for the orders of the Court of Foudaree Udalut.

The Court observed that the Magistrate had, as far as practicable, supplied this defect in his letter of the 21st February 1831, proposing the imposition of certain fines agreeably to the provisions of Clause fourth, Section XVIII. Regulation IX. of 1816; and the

11th May, 1831.

The case of D. G. Gopala Chetti and others.

Court having fully considered the evidence and the circumstances of the case, as affecting the aforesaid D. G. Gopala Chetti, under the authority vested in them by Section XIX. Regulation IX. of 1816 imposed upon him a fine of Rupees 500 commutable, if not paid, to imprisonment for and during the period of six months.

GOVERNMENT,

Versus

* RAMAN CATAVARAYAN.

Charge—Returning from Transportation.

11th May, 1831.

Raman Catavarayan's case.

The prisoner in this case, convicted of having returned from transportation, was sentenced to be re-transported, and it was intimated to him that in the event of his again returning from transportation he would be sentenced to suffer death.

The prisoner was charged with having, on a certain date unknown, returned from Pulo Penang, to which place he had been transported for life under the sentence passed upon him in Case No. 10 of the Chingleput Calendar for the 1st Session of 1819.

The crime charged having been fully established the Court of Foudaree Udalt (present F. A. Grant and J. Bird) sentenced the prisoner to be retransported, and directed that the Criminal Judge should communicate to him that in the event of his again returning from transportation he would be sentenced to suffer death.

GOVERNMENT,

Versus

1. GANGARAZ COTAMRAZ,
2. CHINNAPAYA RANGARAZ,
3. CHINNAPAYA SUBBARAZ.

Charge—Aiding and Abetting in the Performance of Suttee.

24th February, 1832.

The case of Gangaraz Cotamraz and others.

The prisoner was tried at Guntoor before the Acting Judge on Circuit at the second Session of 1831, charged with having on the

24th February, 1832.

The case of Gangaraz
Cotamraz and others.

In this case, in which the 1st and 2nd prisoners were convicted of having aided and abetted in the performance of Suttee, and were sentenced respectively to pay a fine of Rupees 100 commutable to imprisonment for three months under Clause second, Section IV. Regulation I. of 1830, there appearing certain circumstances of extenuation in their conduct, which in the opinion of the Foujdaree Udalut rendered the infliction of a more severe punishment uncalled for, the Court of Foujdaree Udalut, adverting to the negligence displayed by the Village Moonsiff and Sayer Goomastah in omitting to send immediate information to the Head of Police of the Suttee which was about to be performed, directed that the Magistrate should warn all Heads of Villages and subordinate Police Officers that they are required, on pain of fine or dismissal, to make known immediately to the Head of Police whenever they may be informed that a Suttee is intended.

10th August 1831 aided and abetted one Gangaraz Subamma in performing Suttee with her deceased husband, contrary to the provisions of Clause second Section III. Regulation 2 of 1830.

It was proved in evidence that the 1st prisoner was the son, and the 2nd and 3rd prisoners the brothers, of the deceased Gangaraz Subamma; that they were all present when the Suttee took place; that they were warned by the Sayer Goomastah of Bellamconda, that the act was forbidden by law, but that the deceased persisted in it; and that, although the prisoners endeavoured to dissuade her, the 2nd prisoner ordered the pit to be dug, and the 1st prisoner directed a much larger quantity of firewood to be put in it, than could be necessary to consume a single corpse, and also that the 1st prisoner on the day in question purchased turmeric, which was obviously intended for distribution by the widow, as was usual on such occasions.

The Law Officer of the Circuit Court acquitted the prisoners, considering the evidence insufficient to convict them of the crime charged.

From this Futwah the Acting Judge (D. Banerman) dissented, and, considering the prisoners to be convicted, referred the trial for the final judgment of the Foujdaree Udalut.

The Court (present F. A. Grant, J. Bird and W. Hudleston) concurred with the Acting Judge on Circuit in convicting the 1st and 2nd prisoners of the offence laid to their charge, and being of opinion that the case was not an aggravated one, the prisoners being proved to have endeavoured to dissuade the deceased from burning herself; and as it appeared that, further than providing the pit and the wood, they had not given her any encouragement by word or deed, the Court of Foujdaree Udalut considered that a moderate fine would be sufficient to meet the demands of justice, and accordingly sentenced them respectively to pay a fine of

24th February, 1832.

The case of Gangaraz
Cotararaz and others.

100 Rupees, commutable to imprisonment for three months, under the provisions of Clause second, Section IV. Regulation I. of 1830.

The Court of Foudaree Udalut acquitted the 3rd prisoner and directed his unconditional release.

The Court of Foudaree Udalut commented in their proceedings, which were transmitted with their sentence, upon the negligence of the Village Moonsiff and of the Sayer Goomastah, in omitting to send immediate information to the Head of Police of the Suttee which was about to be performed, and directed that the Magistrate should warn all Heads of Villages and subordinate Police servants that they are required, on pain of fine or dismissal, to make known immediately to the Head of Police, whenever they may be informed that a Suttee is intended.

SHESHA SHELLI, AND MADENA BEE,

Versus

TIMMA, BARRADDU, AND MADAKA.

Charge—*Murder and Robbery.*

24th February, 1832.

The case of Timma and
others.

The prisoners in this case were charged with the murder of two persons, whose bodies were not found, and were convicted, the 1st and 2nd prisoners as principals, upon their confessions before the Criminal Court, corroborated by their delivery of clothes, which were identified as belonging to the deceased, and by evidence that the deceased, were last seen in their company.

The 3rd prisoner was convicted as an accessory, upon his confession that he was present when the murder

The prisoners were tried at Mangalore before the 2nd Judge of the Court of Circuit in the Western Division at the second Session of 1831, charged with having murdered the 1st prosecutor's elder brother Bautu and the second prosecutrix's son Madena Bee with a club and rattan, and with having robbed them of their cloths and a copper vessel valued at Rupees 9.

The circumstances of the case were as follows. The prosecutor's father Nallappa Shetti had rented from Government the wax produced in the Talook of Ankola, and had subrented the same to the three prisoners, and to certain other persons. On the day preceding that on which the murder was committed, the prosecutor's father sent his son Bautu with his servant Ahmid to the prisoner's village of Cukigulli to collect

24th February, 1832.

The case of Timms and others.

took place, corroborated by the circumstantial evidence above adverted to.

The Court of Foujdaree Udalut ruled in this case that a deposition given before a Subordinate Criminal Court by a witness who has died previous to the trial before the Court of Circuit, in order to become legal evidence, must be read and proved at the trial, as having been given by the person whose deposition it purported to be, in the presence of the prisoners, proof being likewise adduced of the death of the deponent.

The Court also ruled that confessions made by prisoners before a Police Officer must be read in Court and proved at the trial in order to render them valid as evidence against the accused.

a sum of money due by the prisoner and others on account of the rent in question. Bautu and Ahmid arriving there in the evening put up, the former at the house of the 3rd prisoner, and the latter at the house of the 2nd. On the following morning it was arranged that they should proceed with the three prisoners to Aversay there to receive the sum due. The prisoners returned to their village on the same day, but Bautu and Ahmid were never seen again. In consequence of their non-appearance, a few days after they were missed, the 1st prosecutor's father reported the circumstance to the Tahsildar, who deputed a Daffadar and six peons to Cukigulli to inquire for them; and they on their arrival were informed by one Timmia, of the deceased having left the village in company with the three prisoners, and of the latter having returned the same day without them, and having stated on their return that the deceased had proceeded on to Ankola.

Upon this the prisoners were apprehended, and on their apprehension the 1st and 2nd prisoners confessed that they had killed Bautu and Ahmid with a byun club and rattan, and had thrown their bodies into a nulla. They pointed out the spot where the murder took place, and where the bodies of the deceased were thrown into the nulla, and produced certain cloths which were identified as having belonged to the deceased.

The 3rd prisoner denied that he had taken any part in the commission of the murder, but stated that he was present when it took place.

The prisoners all asserted that the murder had been committed in consequence of the deceased having struck the first prisoner.

The bodies of the deceased were not found.

Before the Criminal Court the prisoners confirmed their police confession, but retracted them before the Court of Circuit.

The Law Officer in his Futwah declared the 1st and 2nd prisoners convicted of Katl ahmad, Kissas being barred on the

24th February, 1892.
The case of Timma and
others.

ground that it did not appear by whose blows the deceased persons died, and that there was reason to suspect that the deceased had been the aggressors in the affray.

The 3rd prisoner was declared not to be free from suspicion.

The Judge on Circuit (W. O. Shakespear) considered the 1st and 2nd prisoners to be fully convicted by their confessions, and by the circumstantial evidence adduced, of the murders of the deceased, and the 3rd prisoner of having aided and abetted in the same.

And advertng to the cold blooded nature of the murders, and the extremely brutal manner in which, with reference to the nature of the weapons used, they were shown to have been committed, the Judge recommended that the 1st and 2nd prisoners should be hanged at the village of Cukigulli, and that their bodies should be afterwards suspended in chains, either at that place, or at the spot at which the murders were perpetrated, and that the 3rd prisoner should be transported for life.

The Court of Foudjaree Udalut (present J. Bird and W. Hudleston) concurred with the Judge presiding at the trial in convicting the 1st and 2nd prisoners of the murders laid to their charge, and in convicting the 3rd prisoner as an accomplice; and, approving of the recommendation of the presiding Judge in regard to the place of execution, the Court of Foudjaree Udalut sentenced the 1st and 2nd prisoners to be hanged on a gibbet to be erected in the immediate vicinity of the spot where the murders were committed, their bodies to be afterwards suspended thereon in chains.

The sentence proposed by the presiding Judge to be passed upon the 3rd prisoner was reduced by the Court of Foudjaree Udalut to fourteen years' imprisonment with hard labor in irons; there being no evidence against him further than his own confession, which was confined to an admission that he was present when the murders were perpetrated, gave no interruption, and did not subsequently report what had occurred.

Advertng to a remark made by the presiding Judge in the 7th para. of the letter accompanying the trial, referring to the deposition given before the Criminal Court by the 1st witness Timmia, who had died before the trial came on, before the Court

24th February, 1832.
The case of Timma and
others.

of Circuit, the Court of Foujdaree Udalut observed that that deposition, not having been produced at the trial, was not legal evidence, but that it might have been given in evidence upon proof on oath that the deponent was dead, and that it was his deposition given in the presence of the prisoners.

And with reference to a remark in the 15th para. of the letter of the presiding Judge referring to the confessions of the prisoners before the Police Officer, the Court of Foujdaree Udalut observed that those confessions, not being in the record and not having been read on the trial, should have been entirely thrown out of consideration, but that, if they were considered requisite, they should have been read in Court and proved at the trial.

GOVERNMENT,

Versus

SHAMU AYANGAR.

Charge—*Forgery*.

23rd March, 1832.
The case of Shamu
Ayangar.

It is not necessary in a prosecution for forgery to prove the utterance or publication of the instrument alleged to have been fabricated, if there be other evidence to establish the fraudulent intent.

An acquittal on a trial for forgery does not give validity to an alleged forged instrument.

The prisoner was committed for trial before the Acting 1st Judge on Circuit in the Southern Division (G. Garrow) at the first Session at Combaconum in 1832, but was not put upon his trial, the presiding Judge being of opinion that, according to the statement of the case in the charge, the crime of forgery was not complete, because the utterance or publication of the instruments stated to have been fabricated was not alleged, and considering that the evidence to prove the fact of fabrication was not sufficient. The Acting 1st Judge likewise stated that he deemed it inexpedient to try the case on the ground that "it would be establishing the validity or otherwise of deeds involving civil property."

On the Calendar being submitted to the Court of Foujdaree Udalut, that Court (present C. M. Lushington, J. Bird and W. Hudleston) observed that, on the ground of the insufficiency of the evi-

23rd March, 1832.
The case of Shamu Ayan-
gar.

dence to prove the acts charged against the prisoner, that individual had, in their opinion, been properly released without trial.

But considering the Acting 1st Judge to be in error as to the grounds upon which his decision was founded, the Court of Foujdaree Udalut deemed it proper to record the following observations for his information and guidance.

Vide Comyn's Digest,
Vol. IV. Page 407.

"By the English Law a publication or utter-
ing of the forged instrument is not necessary
to complete the crime of forgery. The very
making, with a fraudulent intention and without lawful autho-
rity, of any instrument, which, at common law or by statute, is
the subject of forgery, is of itself a sufficient completion of the of-
fence before publication; and though the publication of the in-
strument is the medium by which the intent is usually made ma-
nifest, yet it may be proved as plainly by other evidence. The
main ground for not making an uttering necessary, is that the
injury, which a false deed affecting a right of property is calculated
to occasion, is not the less from the want of its being made pub-
lic: on the contrary by suppressing it until the supposed witness-
es, &c. are dead, the means of detection are much diminished."

The Court of Foujdaree Udalut were of opinion that "the above
rule was strictly applicable to the provisions of Regulation VI. of
1811 respecting the crime of forgery, and that it was manifest
from the Acting 1st Judge's remarks on the case under consi-
deration that there was abundant evidence of the fraudulent in-
tent, supposing the deeds specified in the indictment to have been
forged."

With respect to the considerations as to the expediency of trying
the case, by which the Acting 1st Judge stated himself to have
been influenced, the Court of Foujdaree Udalut observed in the
first place that with such considerations the Court of Circuit had
nothing to do, and secondly that it was a mistake to suppose that
an acquittal on a trial for forgery would give validity to the alleged
"forged instrument."

The Court of Foujdaree Udalut directed that a copy of their re-
marks on the case should be forwarded to each of the Provincial
Courts of Circuit for their information and guidance.

GOVERNMENT,

Versus

PERALLI KESADU.

Charge—*Perjury*.

2nd August, 1832.

The case of Peralli Kesadu.

It was ruled in this case that an indictment for Perjury should describe the words spoken by the accused person on which the perjury is supposed to have been committed, the place where, and the time when they were uttered, the judicial proceeding to which the alleged perjury may be material; all which particulars, together with the falsehood of the words on which the perjury is charged, must be proved on the trial; failure of proof in any one of the points specified in the definition of perjury contained in Section IV. Regulation VI. of 1811 being fatal to a prosecution for that offence.

No person should be prosecuted for perjury, who has not been cautioned against committing himself on his oath, and who has not subsequently persisted in maintaining falsehood for truth.

The prisoner was tried at Guntoor before J. G. Paske, Acting Judge of Circuit, at the 1st Session of 1832, upon an indictment charging him with having committed perjury in having falsely and wilfully deposed on oath before the Court of Circuit at the 2nd Session of 1831 that he did not know of the circumstance of his son Sattigadu having been sent to the Criminal Court at Nellore.

It was stated in the indictment that the said deposition was given with the view to make it appear that the deponent had no enmity against the prisoners in the case in which it was recorded, they being the persons by whom the deponent's son had been apprehended, when sent to Nellore for trial, and that the said deposition was therefore material to a principal point at issue in the case.

The Law Officer of the Court of Circuit convicted the prisoner of the crime charged.

From this Futwah the Judge on Circuit dissented, considering that the crime of perjury was not proved, and that the prisoner had been committed for trial upon insufficient grounds.

The Court of Foujdaree Udalut (present J. Bird and W. Hudleston,) to whom the trial was referred for final judgment, acquitted the prisoner of the crime laid to his charge, and directed that he should be unconditionally released.

The Court of Foujdaree Udalut were of opinion that the fact of the prisoner's son having been sent to Nellore could not be considered a point material to the issue of the case, which was under trial before the Court of Circuit; and even if it were, the Court

2nd August, 1832.
 The case of Peralli Kosa-
 du.

considered that the prisoner could not be convicted of perjury; as although it was proved in evidence that he knew that his son was apprehended and taken away by the Police on the occasion referred to, there was nothing to show that he had positive knowledge of his son having been sent from the Talook to Nellore.

The Court of Foujdaree Udalut observed that the arraignment of the prisoner before the Court of Circuit was not drawn up in the form prescribed by the Circular Order of the Foujdaree Udalut for indictments for perjury and by Regulation VI. of 1814, and that had the Acting Judge on Circuit referred to that form he would not have directed the commitment of the prisoner, because he would have at once perceived that the several requisites for a conviction of perjury were not combined in the prisoner's case.

The Court of Foujdaree Udalut accordingly directed that the Acting Judge's attention should be called to their Circular Order, issued under date 31st January 1814 with a view to render the records of Criminal trials more perfect and satisfactory.

This order, which had more especial reference to indictments for the crime of perjury, contained in the following remarks.

"Perjury is declared to be giving intentionally and deliberately before a Court of Judicature, Magistrate or other authorized public officer, a false deposition upon oath, or under a solemn declaration taken instead of an oath, relative to some judicial proceeding, Civil or Criminal, and upon a point material to the issue thereof."

"The definition of the crime being thus precise, the charge against the person supposed to be guilty of it ought to be framed with corresponding precision. It ought to contain the words spoken by the accused person, in which the perjury is supposed to be committed, the place where and the time when they were uttered. It ought also to describe the Judicial proceeding to the issue of which the alleged perjury may be material. The foregoing particulars with the falsehood of the words on which the perjury is charged must be all proved on the trial. Failure of proof on any one of the points specified in the definition of perjury contained in Section IV. Regulation VI. of 1811 must be fatal to the prosecution, because the crime is defined to consist not in one or more of those particulars, but in all and every one taken together."

2nd August, 1832.

The case of Peralli Kesadu.

“No person should be made the object of a prosecution for perjury who has not been cautioned against committing himself on his oath and has subsequently persisted in maintaining falsehood for truth. The frequency of prosecutions for perjury without this precaution must make the Courts of Judicature a terror to the honest witness by exhibiting instances of men of respectability and character being hurried to Jail or compelled to give bail for their appearance to take their trial on an ignominious charge without having had an opportunity of explaining what might only have been a slight inadvertance or misapprehension. The want of the precaution must on the other hand give confidence to the liar by facilitating his escape from punishment, since it is essential to his conviction that the perjury should be deliberate and intentional, and this must be difficult of proof when the witness has not been warned of his danger. Even in a case where a witness has on two occasions given glaringly contradictory and incredible testimony on oath regarding one and the same transaction, he should be warned of the difference between his statements, and allowed to offer any explanation with a view to reconcile them, before he is committed to take his trial for perjury. It is indeed by the most patient preliminary proceeding alone that a beneficial operation can be given to the legislative enactments against the crime, and a resort to them in any case, wherein it may be possible to give an honest interpretation to the deposition of a witness, must be productive of injurious consequences.”

KUPPARAPU GARUDAMMA,

Versus

1. KADARI CHINNA NARASIMHADU,
2. KADARI PEDDA NARASIMHADU,
3. KANCHAMREDDI SUBBADU.

Charge—Murder.

20th August, 1832.

The case of Kadari Chinna Narasimhadu and two others.

The prisoners were arraigned at Cuddapah at the 1st Session of 1832 before the 2d Judge on Circuit on a charge of having at midnight

20th August, 1832.

The case of Kadari Chinnas Narasimhadu and two others.

on the 30th May 1831 in the Village of Venkatapuram in the Talook of Kamalapur murdered the prosecutrix's son by striking him on the head with an axe.

The 3rd prisoner in this case, to whom an offer of a conditional pardon had been made under sanction of the Governor in Council, having been committed for trial by the Criminal Judge, without any instruction from the Judge of Circuit, on the ground of his having denied the material facts previously stated by him, the Court of Foudaree Udalt ruled that no person to whom the offer of a conditional pardon has been made should be committed to take his trial on the ground of failure to perform the conditions of such pardon, excepting by order of the Judge of Circuit who may have tried the case.

The facts of the case are as follows. On the night the murder was committed the 1st prisoner came to speak to the prosecutrix's son regarding certain money dealings, which had taken place between them, and in which the 1st prisoner had become indebted to the deceased. Words passed between them in consequence of the 1st prisoner having delayed the payment of his debt, which ended in the deceased threatening to take measures for its recovery, and the 1st prisoner leaving the house, defying the deceased to do his utmost in the matter, the prosecutrix having been present when the quarrel took place. After the departure of the 1st prisoner the prosecutrix having gone to sleep on a pial in front of her house, and the deceased in a shed about 18 yards off, the

former was awakened by a noise proceeding from the shed in which her son was sleeping, which she described as resembling a "loud snoring." She got up, went towards the shed and before she reached it saw the prisoner making away from it with an axe in his hand. On going up to the cot on which her son was lying she found him dead, with wounds on his temple, and his forehead covered with blood. She immediately raised an alarm and sent for the Reddies and Curnums of the Village to whom she reported what had occurred. The 1st prisoner was immediately apprehended, when he named the 3rd prisoner, his own ploughman, as the perpetrator of the murder, stating that, after his departure from the house of the prosecutrix on the evening in question, he met the 3rd prisoner with an axe on his shoulder, who told him that he had business with the deceased, and was going to speak to him and requested him (the 1st prisoner) to accompany him, that he accordingly went with him and on their arriving near the prosecutrix's house, 3rd prisoner went on in front to the shed in which

20th August, 1832.
The case of Kadari Chin-
na Narasimhadu and
two others.

the deceased was sleeping and cut the latter on the head with the axe, that upon seeing this he asked 3rd prisoner what he did it for, and was going up to seize him, when the latter repeated the cut upon the head of the deceased, after which they went away together, and the 3rd prisoner having dropped the axe in the road and run off, he (the 1st prisoner) picked it up and took it with him to his house. The statement given by the 1st prisoner led to the apprehension of the 3rd prisoner, who denied having committed the murder, but alleged that it was perpetrated by the 1st prisoner, who had induced him to accompany him and the 2nd prisoner to the house of the prosecutrix; on their arrival at which the 1st prisoner went up to the shed in which the deceased was sleeping and struck him two blows with an axe between the eyebrow and the ear.

The 2nd prisoner, the elder brother of the 1st prisoner, denied having been present at or having had any participation in the murder, but stated that on the evening in question the 3rd prisoner had come to him and told him that it was his intention to murder the deceased, and requested him to accompany him for that purpose, that he refused and went off to another Village, where he was engaged in ploughing at daybreak on the following morning, when he was apprehended by one of the Reddies of Venkatapuram, and informed of the murder that had been committed.

The prosecutrix stated that the 1st prisoner was the only person seen by her on the occasion in question in the neighbourhood of the hut in which her son was murdered.

On the case being committed to the Criminal Court the Acting Criminal Judge applied for permission to make a conditional offer of pardon to the 3rd prisoner in the event of his consenting to become an approver and to reveal the circumstances of the case.

Permission to adopt this course was granted by the Governor in Council, and the 3rd prisoner was accordingly examined upon oath as a witness in the case—but having in his examination denied the material facts stated by him in his deposition before the Police, he was committed as a prisoner to the Court of Circuit to take his trial upon the charge.

20th August, 1832.

The case of Kadart Chinnas Narasimhadu and two others.

Previous to his arraignment the Circuit Judge renewed to the 3rd prisoner the offer of conditional pardon, but, on his denying all knowledge of the facts of the case, proceeded to arraign him as a prisoner upon the charge contained in the indictment preferred against him in the Criminal Court.

The evidence before the Circuit Court consisted of that of the prosecutrix, of certain of the villagers who deposed to the nature of the wounds inflicted upon the deceased, of two persons who were sleeping on the terrace of the prosecutrix's house when the murder was committed, and who were awake by the prosecutrix's cries, who had likewise been present in the prosecutrix's house, when the quarrel mentioned by the prosecutrix occurred between the 1st prisoner and the deceased a few hours before the murder took place, and of that of the attesting witnesses to the statements made by the prisoners before the Police and to that made by the 3rd prisoner before the Criminal Court, wherein that prisoner had admitted that the deposition taken from him by the Head of Police was correctly recorded.

The Law Officer found the 1st and 3rd prisoners guilty as accessaries to the commission of murder, and declared them liable to Ookoobut, acquitting the 2nd prisoner. The Circuit Judge (T. Gahagan) considered the 1st prisoner to be clearly convicted as the murderer of the deceased, and seeing strong ground for suspecting the 2nd and 3rd prisoners as accessaries, referred the trial for the final judgment of the Foujdaree Udalut.

The Court of Foujdaree Udalut (present W. Oliver and W. Hudleston) concurred with the Circuit Judge in the conviction of the 1st prisoner and sentenced him to suffer death, acquitting the 2nd and 3rd prisoners, whom they directed to be unconditionally released.

In communicating their sentence the Court of Foujdaree Udalut observed that "according to the declaration made on the 18th July 1831 to the 3rd prisoner agreeably to the Circular Order of the 3rd April 1822 his committal for trial was made contingent upon its being proved to the satisfaction of the Judge by whom the charge of murder should be tried that he was a principal or had

20th August, 1832.
The case of Kadari Chin-
na Narasimhadu and
two others

“concealed or misrepresented any material fact
“within his knowledge touching the said crime,”

but that on reference to the Calendar it ap-
peared that this prisoner was committed for trial by the Crimi-
nal Judge together with the two other prisoners, and without any
instructions from the Judge of Circuit.

“This proceeding” the Court observed “was at variance with
“the standing orders, and the irregularity, it would seem, was on
“the part of the Criminal Judge and should have been corrected by
“the 2nd Judge on Circuit.”

And to obviate mistakes respecting the course to be pursued on
future similar occasions, the Court of Foujdaree Udalut deemed it
proper to direct by a Circular Order that no person, to whom the
offer of a conditional pardon has been made shall be committed to
take his trial on the ground of failure to perform the conditions of
such pardon, excepting by order of the Judge of Circuit who may
have tried the case.

RUNGAPILLAY,
AND PACHAMUTTU CONAN,

Versus

1. PERUMAI,
2. PACHAYAPPA,
3. KOLACARAN,
4. RAMAN,
5. VATTAL NAYARAN,
6. VODDA RAMAN,
7. SUBBARAYA ODAYAN,
8. PARA COLANDE,
9. SATTI.

Charge—*Gang Robbery attended with aggravating circumstances.*

19th September, 1832.
The case of Perumal
and others.

The prisoners in this case were tried at Cud-
dalore at the 1st Session of 1832 before the 2nd

19th Sept. 1832.

The case of Perumal and others.

It was ruled in this case, in which the prisoners were tried upon two separate indictments charging them with having committed the crime of Robbery by Open Violence in the houses of the two prosecutors, situated in the same village, and on same night, that no necessity existed for the separation of the two cases, the charges being against the same prisoners, being of the same description, and stating the crimes, upon which they were founded, to have been committed at the same time and place, and the Circuit Judge was referred to the Circular Order of the Foujdaree Udalut of the 25th February 1829, which was declared to be applicable to the case.

Judge on Circuit upon two separate indictments charging them with having on the night of the 16th February 1832, in company with certain other persons not apprehended, proceeded in a gang to the house of the respective prosecutors, broken into the same, and plundered them of property valued at Rupees 142-9-5, and likewise with having maltreated the inmates of the house in question.

The Judge on Circuit (T. Gahagan) in concurrence with his Mahomedan Law Officer convicted the prisoners of the crimes laid to their charge, and referred the trials for final judgment of the Foujdaree Udalut, with two separate letters of reference recommending that the prisoners should be sentenced severally to transportation for life.

The conviction of the prisoners rested on their confessions before the Police and Criminal Court, on their proved delivery of the plundered property, which was identified by the respective prosecutors, and by their neighbours, as belonging to the prosecutors.

*

The Court of Foujdaree Udalut (present J. Bird and W. Hudleston) concurring in the prisoners' conviction of the crimes charged, and taking into consideration the cruel maltreatment inflicted by the prisoners upon the 2nd prosecutor, who was proved to have been severely burnt by them, passed upon all the prisoners the sentence of transportation recommended by the Judge on Circuit.

In communicating their sentence the Court of Foujdaree Udalut remarked that there was no necessity for the separation of the two cases in which the prisoners were tried.

The Court observed that the two charges were against the same prisoners, were of the same description, and stated the crimes, on which they were founded, to have been committed at the same time and at the same place.

The Court accordingly referred the Judge on Circuit to their

19th September, 1832.

The case of *Perumal*
and others.

that he should be

Circular Order of the 25th February 1829 which was issued in consequence of the submission of a question on two similar cases, and directed that he should be guided by the rules therein laid down.

UPPANNA,

Versus

SIVAGA.

Charge—*Murder.*

20th November, 1832.

Sivaga's case.

This case was tried at Bellary at the 2nd Session of 1832 by the Acting Judge on Circuit; the prisoner being charged with having on the 13th December 1831 murdered his wife Najaramma, daughter of the prosecutor, by inflicting a wound with a sword on her forehead, in consequence of which wound she died on the following night.

In this case, in which the prisoner was charged with the murder of his wife, his confession before the Police, which was corroborated by other evidence, was rejected by the Court of Foudarees Udalut on the ground that it had not been read at the trial, and that the manner in which it was attested was irregular, the attesting witnesses not having been present when it was delivered.

The prisoner was placed under a requisition of security.

Notice was taken by the Court of Foudarees Udalut of the apparent neglect of the Circuit Judge to make himself master of the preliminary examination held in the case by the Criminal Court.

The circumstances of the case were as follows; on the night on which the murder was committed the prosecutor, with the prisoner and his wife, had proceeded to a feast at a village named Madagam, about two and a half miles distance from their own. On their arrival they became separated in the crowd, and the prosecutor some hours afterwards was informed that his daughter had been wounded. On repairing to the spot where she lay he found her lying on the ground insensible and wounded in the manner described in the indictment; the wounds were sown up on the spot, and she was removed to her father's house where she died on the following evening. The prisoner having, it appears, been apprehended shortly after the occurrence, admitted before the Head of Police that he had

inflicted the wound from which his wife died, having been incited to do so from jealousy in consequence of her having quitted him at the feast and entered into conversation with one Bhima, between whom and his wife he suspected that an improper intimacy existed.

20th November, 1832.
Sivaga's case.

He likewise stated that he on the same occasion wounded the above mentioned Bhima, who however did not appear at the trial.

The evidence on the trial consisted of the prosecutor's deposition, the prisoner's confession before the Head of District Police, the deposition of the person who stitched the wound inflicted on the deceased, that of the Tallaries by whom the prisoner was apprehended, of the witnesses who attested his Police confession, of a person who inspected the corpse of the deceased, and the verdict of the inquest.

The Law Officer acquitted the prisoner, considering the evidence insufficient to establish the charge.

The Acting Judge on Circuit (H. Bushby) dissenting from this Futwa, and considering the prisoner's Police confession, corroborated by the other evidence adduced, sufficient to establish his guilt, referred the trial for the final judgment of the Foujdaree Udalt.

In the absence of any direct evidence to show that the prisoner was the person who inflicted the wound which caused the death of the deceased, and adverting to an irregularity in the attestation of the prisoner's confession, and to the omission on the part of the Acting Circuit Judge to cause the confession in question to be read at the trial, the Court of Foujdaree Udalt (present C. M. Lushington, J. Bird and W. Hudleston) considered the evidence insufficient to the prisoner's full conviction, but being of opinion that strong suspicion attached to him sentenced him to find security for his good behaviour and appearance when required within three years in two sureties of 100 Rupees each surety, or in default thereof to be detained for that period in confinement.

In communicating their sentence the Court of Foujdaree Udalt recorded the following remarks.

"The declaration of the prisoner in the above case alleged to have been given before Ramasamy styled 'Head of Police of the Talook of Gullim' is attested by the witnesses Ravana and Virappa, from whose evidence before the Acting Criminal Judge it appears that they were not present when the said declaration was reduced to writing; but that being sent for by that Police Officer, a statement, said to have been previously taken from the prisoner, was read over and acknowledged in their presence."

20th November, 1832.

Sivaga's case.

" It has been repeatedly pointed out by the Court of Foujdaree Udalut that the declarations of prisoners must be delivered in the presence of attesting witnesses, and that their presence from the commencement to the close of the prisoner's examination is essential to its admissibility as evidence on the trial."

" The irregularity committed by the Head of Police in this instance should be brought to the notice of the Magistrate, in order that he may take effectual measures to prevent its recurrence.

" The Court of Foujdaree Udalut observe that the late Acting Judge on Circuit in the Centre Division did not cause the prisoner's declaration to be read at the trial, as required by the standing orders of the Court; but merely showed it to the attesting witnesses and asked if it was the same that was given by the prisoner."

" This proceeding was most irregular, and the declaration cannot under these circumstances be allowed any weight."

" It appears to the Court of Foujdaree Udalut that the Acting Criminal Judge should have obtained the evidence of some of the bystanders, who, according to the account given of the transaction, must have seen the blow struck which caused the death of the deceased, and the late Acting Judge on Circuit should have caused this defect in the evidence to be supplied."

" But the Court of Foujdaree Udalut are constrained to remark that this trial has been conducted altogether in a most inefficient and slovenly manner, and that, from the mode of the late Acting Judge's examining the witnesses, it would appear that he had given no attention to the preliminary examinations before the Acting Criminal Judge."

MALAGURI VENCATARAMANAPPA,

Versus

PEDDAPOTU BASAVIGADU.

Charge—*Highway Robbery.*

26th November, 1832.
Peddapotu Basavigadu's
case.

The prisoner was tried at Cuddapah at the 2nd Session of the Court of Circuit for 1832 upon an indictment charging him with having

26th November, 1832.
 Peddapotu Basavagadu's
 case.

An objection advanced by a Mahomedan Law Officer to the sufficiency of evidence for conviction, unconnected with the five personal exceptions to the evidence of prosecutors and witnesses enumerated in Clause first, Section II. Regulation VI. of 1829, cannot be removed by a second question.

at eight o'clock in the morning of the 6th May 1832, in company with another individual not apprehended, attacked the prosecutor and the 1st and 2nd witnesses, while they were passing through the jungle, situated between the villages of Timmanenipallam and Abacampalli in the Talook of Pulivandala, in the Zillah of Cuddapah, and with having robbed them of property belonging to the prosecutor valued at Rupees 480.

The 1st witness having been prevented by illness from appearing before the Court of Circuit, the evidence for the prosecution consisted of the testimony of the prosecutor, and of his servant the 2nd witness, who both identified the prisoner as one of the persons by whom the robbery had been committed, and of the testimony of the 3rd witness, who, though not an eyewitness of the robbery, deposed to having seen the prisoner and another person in the jungle in question on the morning of the day the robbery was alleged to have been committed.

The prisoner pleaded not guilty and cited two witnesses to prove an alibi.

The Mahomedan Law Officer in answer to the first question propounded to him, declared the prisoner not to be convicted upon the evidence adduced, advancing certain technical objections to the evidence of the prosecutor and the 1st witness, and rejecting that of the 3rd witness as immaterial to the charge.

Upon a second question being put to him to the effect that "the statement of the prosecutor, corroborated by the evidence taken in this case, had been considered sufficient to convict the accused to what punishment would the prisoner have been subjected," the Law Officer declared that the prisoner would have been subjected to Hud or to the amputation of the right hand and left leg.

The Acting Judge on Circuit (H. Bushby) receiving the second Futwah delivered by the Mahomedan Law Officer, as tantamount to a conviction, and considering the evidence sufficient to establish the prisoner's guilt convicted him of the crime charged, and sen-

26th November, 1832.
 Peddapotlu Basavigadu's
 case.

tenced him to fourteen years' imprisonment with hard labor in irons under the provisions of Clause third, Section IV. Regulation XV. of 1803.

On perusal of the Calendar the Court of Foujdaree Udalut (present C. M. Lushington, J. Bird and W. Hudleston) held the conviction to be irregular, with reference to the nature of the second question propounded to the Mahomedan Law Officer by the Acting Judge on Circuit, and they accordingly annulled the sentence and directed that the record of the case should be transmitted for their final judgment; the second question put by the Acting Judge not being framed upon the principles upon which it was contemplated by Section II. Regulation VI. of 1829 that certain personal objections taken by Mahomedan Law Officers to the evidence of witnesses or prosecutors should be overruled. •

On consideration of the entire record of the case the Court of Foujdaree Udalut concurred with the Acting Judge in considering the evidence sufficient to the prisoner's conviction of the crime charged, and they accordingly convicted him thereof, and passed upon him the same sentence as that previously awarded by the Acting Judge.

In communicating their sentence the Court of Foujdaree Udalut recorded the following observations for the information and future guidance of the Acting Judge.

"The second question put by the late Acting Judge to the Law Officer in this case is worded as follows. "If the statement of the prosecutor corroborated by the evidence taken in this case had been considered sufficient to convict the accused, to what punishment would the prisoner have been subjected."

"This question is not warranted by the Regulations, and its irregularity formed the ground upon which the Court of Foujdaree Udalut directed a reference of the trial."

"Under the provisions of Clause first, Section II. Regulation VI. of 1829 which modifies Section VIII. Regulation I. of 1825 the Mahomedan Law Officer is to be required to state whether or not, if the five personal exceptions to the prosecutors and witnesses, enumerated in that Clause or either of them, did not exist, the prisoner would be convicted: but the question put by the late Acting Judge is framed upon a principle utterly different from that of

26th November, 1832.
Peddapotu Basavigadu's
case.

“ this Regulation, as explained in the preamble,
“ and goes to supersede altogether the restric-
“ tions contained in Clause second of the above
“ Section, by which the Judge of Circuit is required to refer the
“ trial to the Court of Foujdaree Udalt, if the Law Officer ob-
“ jects to the conviction of the prisoner on the ground of the in-
“ sufficiency to conviction of the testimony itself, or on any other
“ ground separate and distinct from the personal exceptions speci-
“ fied in Clause first.”

“ The late Acting Judge is therefore cautioned to be careful in
“ future to observe this important distinction and in cases of perso-
“ nal exception to witnesses, as well as when material evidence may
“ be given by a prosecutor, to require the Law Officer to declare the
“ sentence to which the prisoner would have been liable, if the evi-
“ dence of the prosecutor or of the witness or witnesses objected to
“ had been admissible under the provisions of the Mahomedan Law.”

MANEYA,

Versus

1. BENDA, *alias* IYEMPA, (*Dead.*)
2. SUBBA ACHARI,
3. MAHDAR.

Charge—*Murder.*

21st January, 1833.

The case of Benda, *alias*
Iyempa and others.

Held by the Court of
Foujdaree Udalt that
the fact of approvers
having failed to per-
form the conditions
upon which a pardon
has been offered to
them under the provi-
sions of Section XX.
Regulation VIII. of
1802 does not justify
the reference of a trial,
in which a Session
Judge is by Law com-
petent to pass sentence,
for the final judgment
of the Foujdaree Uda-
lut.

The record of this case, in which the 2nd and
3rd prisoners were arraigned upon a charge
of murder before the Court of Circuit in the
Western Division holding a Session at Manga-
lore, the 1st prisoner having demised previous
to the commencement of the trial, was referred
for the final judgment of the Foujdaree Udalt
in order that the Court of Foujdaree Udalt
might determine how the 1st and 2nd witnesses
who had been admitted as approvers upon the
recommendation of the Criminal Court should
be dealt with; the Judge on Circuit being of
opinion with reference to the contradictions in
their evidence they were not entitled to the par-

21st January, 1833. don which had been conditionally tendered to
 The case of Benda, *alias* them.
 Iyempa and others.

The 1st Judge on Circuit (W. O. Shakespear) in concurrence with his Mahomedan Law Officer considered the evidence insufficient to the conviction of the prisoners who had been tried; but being of opinion that strong suspicion attached to them recommended that they should be placed under requisitions of security.

The Court of Foujdaree Udalut (present W. Oliver and W. Hudleston) considering the evidence insufficient to justify even the requisition of security, directed that the prisoners should be unconditionally released.

Adverting to the grounds assigned by the Judge on Circuit for referring the trial for the final judgment of the higher Court, the Court of Foujdaree Udalut recorded the following remarks.

"It being the 1st Judge's opinion that suspicion only attached to the prisoners, he should have disposed of the case according to the Regulations, and if he considered it necessary, in order to enable the Foujdaree Udalut to pass a determination on the above point, viz., the course to be adopted in regard to the 1st and 2nd witnesses, to lay before them a translation of the whole of the proceedings, it was open to him to do so.

"It is fully explained in the Circular Order of the Foujdaree Udalut, dated the 3d April 1828, and it is distinctly intimated in the form therein prescribed for the offer of pardon under Section XX. Regulation VIII. of 1802, what proceeding should be held, when the party, to whom such offer is made, may fail to perform the conditions on which the pardon was promised. In such cases the informer is to be put on his trial for the crime, and if he shall have made a free and voluntary confession *before* the offer of the condition of a pardon, that confession shall be good evidence against him.

"It appears that the offer of pardon was made by the Criminal Judge on the 4th September last in the form prescribed; the prisoners Jabu and Appuja having, on the 30th June 1832, delivered before that Officer confessions implicating them in the crime.

"Under these circumstances it being clear from the prevarications in the evidence of these two persons that they have "mis-

COURT OF FOUJDAREE UDALUT.

21st January, 1833. " represented material facts within their know-
The case of Benda, alias " ledge touching the said crime," the Court
Iyempa and others. " of Foujdaree Udalut are of opinion that they
" should be committed to take their trial for their part in the
same."

GOVERNMENT,

Versus

MUTTU AND PERUMAL.

Charge—*Aiding and Abetting in the Commission of Murder
and Robbery.*

11th February, 1833.
The case of Muttu and
another.

A confession unsupported by other evidence is insufficient for conviction.
A prisoner cannot be affected by any evidence which may not have been adduced at his trial.

The prisoners in this case were tried at Tinnevely at the 2nd Session of 1832, before the 3rd Judge on Circuit (W. R. Taylor) on an indictment charging them "with having one
" night in the end of Avani Andu 1006, corresponding with the September 1830, accompanied the robbers, who committed robbery and
" murder by torch light in the house of Balakristnapermal at Tachanallur in the Nellyambalam Talook ; and with having, while robbery was committed
" in the house by other robbers, thrown stones on the east and
" west side of the house to prevent the approach of the villagers,
" and further with having shared the stolen property."

The proceedings in the trial, as originally submitted for the final judgment of the Foujdaree Udalut consisted of a record of the prisoners' plea of guilty to the charge, which was prosecuted in the usual form by the Government Vakeel ; a note being entered to the effect that, as the prisoners confessed the crime laid to their charge, the Court did not think it necessary to examine witnesses on other side.

In the 4th paragraph of the letter accompanying the trial the Judge on Circuit stated that, as there were no proceeding in the number under reference to show that a murder had been committed in the house of Balakristnapermal, he had considered it advisable to call for the proceedings held before the Joint Criminal Judge in No. 1 of the Tinnevely Calendar, 1st Session 1832, as it was

11th February, 1833. connected with the present case, and would
 The case of Muttu and tend to show that a murder had been perpetrated
 another. in the house of Balakristnapermal when the
 gang robbery took place, in which the prisoners admitted that they
 participated.

The Judge on Circuit accordingly transmitted an appendix containing translation of the proceedings held before the Magistrate and Joint Criminal Judge in that case for the information of the Foujdaree Udalut, with a recommendation that the prisoners should be sentenced to imprisonment in banishment with hard labor in irons for the period of 14 years.

On perusal of the proceedings the Court of Foujdaree Udalut present (T. A. Oakes, and W. Hudleston,) observed that it was a settled rule, that unless there is evidence to prove that the crime charged against a prisoner has actually been committed, his confession of it cannot be admitted to convict him.

"It is also a rule" the Court remarked, "which can scarcely have been overlooked by the 3rd Judge (on Circuit) that a prisoner cannot be in any way affected by any evidence whatever, excepting such as may be adduced at his trial."

"The preliminary proceedings in another case forwarded by the 3rd Judge, in the opinion of the Court of Foujdaree Udalut, could in no degree supply the deficiency of the evidence on this trial, nor would they have been available for that purpose, had they been proceedings held by the Magistrate and Joint Criminal Judge in this case."

The Court of Foujdaree Udalut accordingly directed that the trial should be returned to the 3rd Judge on Circuit in the Southern Division by precept commanding him to instruct the Joint Criminal Judge to obtain the attendance of such witnesses as could depose to the commission of the crime, in which the prisoners were charged with having aided and abetted, and in the presence of the prisoners to take their evidence, and to take down any statement which the prisoners might make after such evidence had been so taken, and to annex the English and Persian translation of the additional evidence so taken to the record of the trial, and retransmit the same to the Foujdaree Udalut.

The requisite evidence having subsequently been procured, the

11th February, 1833.
The case of Muttu and
another.

Court of Foujdaree Udalut convicted the prisoners of the crime charged against them, and sentenced them severally to transportation for life.

CHADRALA VIRADU,

Versus

VUTTUPULU SOMADU AND 13 OTHERS.

Charge—Robbery by Open Violence.

31st July, 1833.
The Case of Vuttupulu
Somadu and others.

Held by the Foujdaree Udalut that a confession before a Criminal Judge, supported by evidence that the crime charged has been actually committed, is sufficient for conviction.

The prisoners were tried at Masulipatam at the 2nd Quarterly Sessions of the Court of Circuit in the Northern Division upon an indictment charging them with having on the night of the 28th October 1832 proceeded in a gang to the prosecutor's house, broken into it, severely maltreated the inmates, and plundered it of property valued at Rupees 90-9-0.

The 6th prisoner died in Jail previous to the commencement of the trial before the Court of Circuit.

The Mahomedan Law Officer convicted the surviving prisoners of the robbery laid to their charge; acquitting them of the maltreatment alleged to have been exercised by them towards the prosecutor and the inmates of the house.

The 2nd Judge on Circuit (G. J. Casamajor) considered the 1st, 3rd and 7th prisoners convicted of the several acts specified in the indictment, but deemed the evidence insufficient to the conviction of any of the remaining prisoners, rejecting their confessions before the Criminal Court on the ground that they were "probably made in order to get the Jail allowance."

He accordingly referred the case for the final judgment of the Foujdaree Udalut with a recommendation that the 1st and 3rd prisoners should be sentenced to transportation for life, and the 7th prisoner to fourteen years' imprisonment with hard labor in irons, and that the remaining prisoners should be unconditionally released.

The Court of Foujdaree Udalut (present T. A. Oakes and W. Hudleston) in concurrence with their Mahomedan Law Officers considered the evidence sufficient to the conviction of all the pri-

31st July, 1833.
The case of Vuttupulu
Somadu and others.

soners charged, and passing the sentence of transportation for life recommended by the Judge on Circuit in the case of the 1st and 3rd prisoners, awarded to the remainder imprisonment with hard labor in irons for the period of 14 years.

In communicating their sentence the Court of Foujdaree Udalut recorded the following remarks.

"The Court of Foujdaree Udalut observe that the 2nd Judge of Circuit on the present, as on a former occasion, has rejected the confessions of all the prisoners, excepting the 1st, 3rd and 7th, before the Joint Criminal Judge, stating his opinion that they were very probably made in order to get the Jail allowance."

"This is altogether a gratuitous assumption, and is not even sustained by any thing advanced by the accused themselves."

"It has been always ruled by the Foujdaree Udalut that when there is other evidence to prove that the crime charged was actually committed, a confession before the Criminal Judge is sufficient for conviction."

"The rule is in perfect accordance with the Law of England respecting a confession before a Magistrate."

VALAPA CHETTI,

Versus

1. RANGAN,
2. ARUNACHALAM,
3. SADASIVAN,
4. DANACOTI, *Released by the Circuit Judge.*
5. MUNYAN, (*Died.*)
6. WAMABADIYAN.

Charge—Robbery by Open Violence.

31st August, 1833.
The case of Rangan and
others.

A Judge on Circuit having requested to be informed by what standard of years the term "adult" used in Clause second, Section III. Regulation XV. of 1803 is to

This case was tried at Chingleput at the 1st Session of the Court of Circuit in the Centre Division of the year 1833, the prisoners being charged with having, on the 2d October 1832 at midnight, in company with nine other persons, proceeded in a gang to the house of the prosecutor, beat and maltreated him, and plundered him

31st August, 1833.
The case of Rihgan and
others.

be determined, it was ruled by the Court of Foujdaree Udalut that the liability of a person to punishment for the commission of a crime is not to be measured so much by age, as by the strength of the delinquent's understanding and judgment.

It was also decided on the same reference that no sentences of a mitigated nature in cases not referrible to the Foujdaree Udalut, when the punishment prescribed by Law might be considered too severe, could be enforced by the Court of Circuit without the previous sanction of the Foujdaree Udalut.

of ready money and jewels valued at Rs. 824, and of certain documents belonging to him.

The four prisoners tried before the Court of Circuit were convicted by the presiding Judge, (T. E. J. Boileau) who recommended that in the case of the 1st, 2nd and 6th prisoners the punishment of transportation for life, to which they had rendered themselves liable, should be mitigated to imprisonment in banishment in another Zillah; the ground assigned for the recommendation being, that the personal injuries inflicted upon the prosecutor were slight.

Adverting to the youth of the 3rd prisoner, a boy of twelve years of age, the Judge on Circuit recommended that a free pardon should be granted to him, and with reference to this recommendation he requested to be informed by the Court of Foujdaree Udalut "by what

"standard of years the term "adult" used in Clause second, "Section III. Regulation XV. of 1803, under which provision "every person is considered a proper object of punishment, is to "be determined; and also whether it may be measured by the "aptitude of the delinquent's understanding and judgment, and "whether sentences of a mitigated nature may be enforced on conviction without reference."

In answer to this question the Court of Foujdaree Udalut (present C. M. Lushington and T. A. Oakes) observed that the liability of a person to punishment for the commission of any crime is not to be measured so much by age, as by the strength of the delinquent's understanding and judgment; and considering that the part, which the 3rd prisoner in this case was shown to have taken in the robbery laid to his charge, manifested a discretion to discern between right and wrong, the Court of Foujdaree Udalut declined to accede to the recommendation of the Judge presiding at the trial, that a free pardon should be granted to him, and sentenced him to seven years' imprisonment with hard labor in irons, and on his release from Jail to receive one hundred and eighty stripes with a cat-o-nine tails.

31st August, 1833.

The case of Rangan and others.

With reference to the latter part of the question propounded by the presiding Judge, the Court of Foujdaree Udaltut remarked that no sentences of a mitigated nature in cases not referrible to the Foujdaree Udaltut, when the punishment prescribed by law might be considered too severe, could be enforced by the Court of Circuit without the previous sanction of the Foujdaree Udaltut.

The 1st, 2nd and 6th prisoners were sentenced by the Court of Foujdaree Udaltut to transportation for life.

KASI PANDARAM,

Versus

1. GHERIMAJEROW, AND 2. SUBBARAYAN.

Charge—*Rape.*

6th December, 1833.

The case of Gherimajerow and another.

The 1st prisoner in this case convicted of Rape was sentenced to seven years' imprisonment with hard labor in irons and to receive 100 lashes with a cat-o-nine tails. The 2nd prisoner was convicted as an accessory in having inveigled the prosecutor's daughter to his house to enable the 1st prisoner to accomplish his purpose, and was sentenced to two years' imprisonment with hard labor in irons.

The prosecutor having before the Court of Circuit retracted the evidence he had given before the Criminal Court was ordered to be committed for trial for Perjury and on conviction of that offence at the following Sessions was sentenced to four years' imprisonment with hard labor in irons.

The prisoners were tried at Cuddalore at the 1st Session of the Court of Circuit for 1833 upon an indictment charging the 1st prisoner with having on the evening of the 12th February 1833 committed a Rape upon the person of the prosecutor's daughter Periyamayakam, aged about eleven years, and the 2nd prisoner with having been accessory to the commission of the said rape in having inveigled Periyamayakam to the house in which it was committed.

By the evidence given before the Police and Criminal Court it was clearly proved that the prosecutor's daughter had been forcibly violated in a most brutal manner by the 1st prisoner in the 2nd prisoner's house, to which she had been inveigled by the latter individual.

Before the Circuit Court the prosecutor and his daughter retracted their previous statements in regard to the 1st prisoner having had forcible intercourse with her, both alleging that it had taken place with her own free will and consent.

6th December, 1833.

The case of Gherimajor and another.

Other evidence however adduced before the Court of Circuit went to show that violence had been used, and the fact of the prisoners having confessed before the Police, that the act had been perpetrated by force, was clearly established.

The Law Officer of the Circuit Court convicted both the prisoners of the offences respectively laid to their charge and declared them liable to Ookoobut, and the Acting Judge on Circuit (T. E. J. Boileau), concurring in this futwa, and observing that with reference to the tender age of the prosecutor's daughter, and the fact that she had not yet attained to puberty, the question of whether or not the intercourse had taken place with her consent, was by Law immaterial, referred the trial for the final judgment of the Court of Foujdaree Udalt.

By the Court of Foujdaree Udalt, T. A. Oakes.—“I am of opinion that the 1st prisoner committed a rape and that the second aided in the perpetration of the crime. I would sentence the 1st prisoner to seven years' imprisonment with hard labor, on the public works, and the 2nd prisoner to two years' imprisonment with labor. I am satisfied that the parties were tampered with before they deposed before the Court of Circuit.”

C. M. Lushington.—“I entirely concur in the conviction of both prisoners, but I would suggest, as it is a case of a very aggravated nature, that the 1st prisoner should receive corporal punishment to the extent of 100 lashes with a cat-o-nine tails. I concur in the sentence proposed against the 2nd prisoner. I do not think however the case should stop here. The prosecutor has rendered himself liable to indictment and conviction under the Perjury Regulations, and should in my opinion be committed. He has evidently been bribed to withhold his evidence, hoping thereby to exonerate the prisoners, and doing all in his power to make a tool of our Courts of justice. His advice has also prevailed with the child to pursue the same course. I would therefore direct him to be committed and his conviction, which is infallible, would, I am persuaded, have a very beneficial effect.”

“Mr. Oakes having concurred in the foregoing suggestions, the 1st prisoner was sentenced to seven years' imprisonment with hard labor in irons and to receive 100 lashes with a cat-o-nine tails, and

6th December, 1833.
The case of Gherimaje-
row and another.

the 2nd prisoner to two years' imprisonment with hard labor in irons, and the prosecutor having been committed upon a charge of perjury, was tried at the following Session of the Court of Circuit and sentenced to four years' imprisonment with hard labor in irons under the provisions of Section III. Regulation VI. of 1811.

NOTE.—The remark recorded by the Judge of Circuit in this case, that the tender age of the prosecutor's daughter rendered her consent immaterial, evidently had reference to the doctrine of the English Law, by which it is felony to carnally know a girl under the age of *ten* years, and a misdemeanor to carnally know a girl above the age of *ten* and under the age of *twelve* years; it being immaterial in either case whether the offence was done with or without the consent of the female.

In India, where females come to maturity so early, this doctrine clearly requires modification; and we find it accordingly enacted by 9 of Geo. IV. Chapter 74 (an Act for improving the administration of Criminal Justice within the jurisdiction of Her Majesty's Supreme Courts of Judicature in the East Indies) in consideration of the early age at which females in India arrive at maturity, that it shall be felony in any person to carnally know a girl under the age of *eight* years, and a misdemeanor if the girl be above *eight* and under *ten* years of age; and in the Penal Code prepared by the Indian Law Commissioners the having "sexual intercourse with a woman with or without her consent when she is under *nine* years of age" is declared to constitute the offence of "rape" and is made punishable by the penalties adjudicable for that offence.

In the enactments however which are at present in force in the Company's Courts in India no specific penalties have been laid down for the punishment of offences of this nature, which therefore can only be treated under the general power vested in the Courts of taking cognizance of all offences punishable under the Mahomedan Law, of which the act of illicit intercourse between the sexes, whether with the consent of the woman or not, is one.

In all cases of conviction of the crime of rape the Session Judge is required by Clause third, Section III. Regulation I. of 1818 to refer the trial for the sentence of the Foujdaree Udalt. Whether this rule is applicable to cases of conviction of the other offence referred to, viz. carnally knowing a girl of tender years with her consent, does not appear to have been decided by any of the Company's Courts; but considering the heinousness of the offence, and that under all modern systems of jurisprudence it is placed exactly upon the same footing with the crime of rape, it would appear that the rule in question may with propriety be held to apply to it, and that, accordingly, under the existing law, all cases of conviction of this offence should be referred for the sentence of the Foujdaree Udalt.

GOVERNMENT,
Versus
 MAHOMED KHAN.
 Charge—*Murder.*

14th March, 1834.
 Mahomed Khan's case.

The prisoner in this case was convicted of the murder of his wife, but in consequence of its having been proved on the trial that the deed had been committed in a fit of despair, at being deprived of all means of subsistence, owing to his dismissal on the same day from his situation as a Jail peon, he having attempted likewise to destroy himself, the extreme penalty of the Law was commuted to transportation for life.

The prisoner was tried at Tinnevely at the 1st Session of the Court of Circuit in the Southern Division for the year 1831, upon an indictment for having murdered his wife Mohedeen Beebee, by stabbing her with a dagger. The prisoner pleaded not guilty. On the night on which the murder was committed, the father of the prisoner, who resided in the same house with the prisoner and the deceased, was aroused by cries proceeding from the room in which the prisoner slept with his wife, upon entering which, he found his daughter-in-law (the deceased) lying dead, with three wounds on her belly, and the prisoner also wounded; the dagger usually worn by the prisoner lying on the ground near the deceased. The neighbours having been likewise aroused, the Head of Police was summoned to the spot, and a deposition was taken from the prisoner, in which he confessed that he had stabbed his wife, intending likewise to destroy himself, in consequence of his having been that day dismissed from his situation as a Jail peon, and left thereby without any means of livelihood.

The Circuit Judge (H. Dickinson) in concurrence with the Mahomedan Law Officer convicted the prisoner of the crime laid to his charge, and referred the trial to the Court of Foujdaree Udalt with a recommendation that the prisoner should be sentenced to death. The Foujdaree Udalt (present C. M. Lushington, T. A. Oakes and A. D. Campbell) convicted the prisoner of the crime charged, but taking into consideration the circumstances under which the deed had been committed, and that it was clear from the evidence that the prisoner had entertained no malice against

14th March, 1834.
Mahomed Khan's case

the deceased, but had committed the murder in a fit of despair at being deprived of all means of subsistence, commuted the sentence proposed by the Judge of Circuit to transportation for life.

RAMASAMI NAYAKAN,

Versus

1. PUJARI CHINNA NAYAKAN,
2. PETTI NAYAKAN,
3. CHENNAME NAYAKAN,
4. BUMI NAYAKAN,
5. PULLAMA NAYAKAN,
6. RAMASAMI NAYAKAN,
7. CHENNAME NAYAKAN, SON OF
BUMMA NAYAKAN.

Charge—*Murder.*

19th May, 1834.

The case of Pujari Chinna Nayakan and others.

The 7th prisoner in this case was convicted by the Circuit Judge of the murder of his father upon his own voluntary confession before the Criminal Court, but was acquitted by the Court of Kouydarce U'dalut; that Court considering the evidence insufficient to prove that the prisoner's father was dead, and attributing the statement made by the 7th prisoner to insanity.

The prisoners were tried at Madura at the 1st Session of the Court of Circuit for the year 1834 charged with having murdered the prosecutor's father Codangi Bumma Nayakan. Originally the 1st six prisoners only were committed to the Criminal Court upon the charge entered in the indictment; but, while the investigation against them was proceeding, the 7th prisoner entered the Court, and voluntarily declared that he was the son of the deceased and that he had murdered his father in the presence of the first six prisoners and buried him himself.

The deceased, who was a soothsayer and had been expelled from his caste by the party to which the first six prisoners belonged, but had been re-admitted into it, after a compromise of some civil suits, was alleged to have been last seen in their company going to the funeral of one of their joint relations.

19th May, 1834.
The case of Pujāri Chinna
Nayakan and others.

The prosecutor deposed that on his missing his father he was informed by the 6th witness that he and the 5th witness had overheard the 1st, 2nd and 5th prisoners complaining to one Sabapati Iyan of all the trouble they had experienced from the prosecutor's father and that Sabapati Iyan had advised them to destroy him, that on his referring to the 5th witness he confirmed this statement, and that subsequently he was informed by the 3rd witness that he and the 4th witness had seen the 1st prisoner and four other persons murder his father near to a hill called Curumbu and close to a Selay tree. Upon this he referred to the 4th witness, who stated that it was true, and he then proceeded to the spot described, when he found a skull and some cloths near a hole, which he searched with some other persons and found in it a Veshti cloth and some ropes. He stated that in consequence of the cloths having been soaked in blood he could not distinguish them properly, but that he believed them to have been soaked in blood. The cloths were inspected by the Circuit Judge and were stated by that Officer to have the appearance of having been soaked in blood.

The 1st and 2nd witnesses deposed that they had attested the confession made by the 7th prisoner before the Criminal Judge.

The 3rd witness deposed that he, in company with the 4th witness, had seen the 1st, 2nd, 3rd and 6th prisoners beat and murder the prosecutor's father.

The 4th witness confirmed the statement of the 3rd witness, adding however the 4th prisoner to the list of persons whom he alleged that they had seen engaged in the commission of the murder.

The 3rd witness had stated before the Police that he saw the 1st prisoner assist in putting the body of the prosecutor's father into the hole in which the cloths were found, and that he saw the Veshti cloth of the deceased put in with it. Before the Court of Circuit he stated that on hearing the order given by the 1st prisoner to put the body into the hole, he ran away. At an examination which took place before the Assistant Magistrate of Madura this witness

19th May, 1834.
The case of Fajari Chinna
Nayakan and others.

stated that he had only recognized the 1st prisoner, having been prevented by the darkness from identifying the other persons engaged in the commission of the murder, while before the Circuit Court he identified the 2nd, 3rd and 4th prisoners. There were similar contradictions in the evidence of the 4th witness. There were also discrepancies in the evidence given by these witnesses before the Police in regard to the position in which the prosecutor's father was, when they first saw him on the night in question, and their statements in this point before the Court of Circuit.

The 5th and 6th witnesses deposed to their having heard the 1st, 2nd and 5th prisoners plan the murder of the prosecutor's father at the house of Sabapati Iyan. These witnesses stated that the house, at which the conversation between the prisoners and Sabapati Iyan took place, was 20 feet from the spot where they were sitting, and although they alleged, that when the prisoners passed close to them on their way to Sabapati Iyan's house, they were prevented by the darkness from distinguishing who they were, and only afterwards discovered them by hearing them mention each other's names, they deposed minutely to all that occurred at the house in question, describing the position in which the prisoners were, and the conversation that took place.

The 7th, 8th and 9th witnesses deposed to their having been present with the prosecutor when he found a skull and the cloths before the Court.

The Circuit Judge (H. Dickinson) in concurrence with the Law Officer acquitted the first six prisoners and directed their release, discrediting altogether the evidence of the prosecutor and of the 3rd, 4th, 5th and 6th witnesses; and convicting the 7th prisoner upon his own confession before the Criminal Court, referred the trial for the final judgment of the Foujdaree Udalut with a recommendation that the 7th prisoner should be sentenced to suffer death.

The Court of Foujdaree Udalut (present T. A. Oakes and A. D. Campbell) considered the evidence insufficient, in the absence of other remains, to show that the skull and cloths discovered were those of the prosecutor's father or that that individual was dead; much less that he had actually been murdered; and deeming it im-

19th May, 1834.
The case of Pujati Chinna
Nayakan and others.

possible to attach credit to the extraordinary statement made by the 7th prisoner before the Criminal Court, to the effect that he had singly, in the presence of the first six prisoners, murdered his father with a single blow and buried him without help, with the mere object of preventing the recurrence of dissensions in his caste, (which statement they considered could only be attributed to insanity) acquitted the 7th prisoner of the crime laid to his charge, and directed that he should be placed for a time under the supervision of the Zillah Surgeon, with a view to his ultimate delivery to his family in the event of their consenting to take charge of him.

RUNGAMMAL,

Versus

1. DASI NAYAKAN,
2. NACHAN,
3. VENKATACHALAM,
4. TANDAVARAYAN,
5. CHOKAN.

Charge—*Murder.*

22d September, 1834.
The case of Dasi Naya-
kan and 4 others.

Four prisoners in this case convicted of a most brutal murder, their guilt of which was brought to light in a most extraordinary manner, in consequence of one of those concerned in it talking in his sleep, were sentenced to be hanged; the 1st and 3rd at the scene of the murder, and the 4th and 5th at the usual place of execution. The Joint Criminal Judge, who, on receiving the warrant for the execution of

The prisoners were tried at Cuddalore at the 2nd Session of the Court of Circuit for 1833 for the wilful murder of the prosecutrix's husband Perumal Naik.

It appears that the deceased, who was a Taliar of the village of Pattunandal in the Talook of Tindevanam, was missing from his house on the night of the 20th June 1833, and information having been brought into the village on the following morning that the head of a man much mutilated had been found near a neighbouring tank, the wife of the deceased proceeded to the spot in company with the other Taliar and the Moonsiff of the village, and found there the head

22d September, 1831.

The case of Dasi Nayan and 4 others.

the prisoners, addressed the Court with a view to induce them to mitigate the punishment in the case of the 5th prisoner, was censured for doing so, and also for taking written depositions from the other prisoners on communicating to them their sentence.

and not far off an arm, both of which had evidently been recently severed from the trunk. A small iron implement, which was at once recognized as the property of the deceased, being found near them, led to the conclusion that the deceased had been murdered, and that the mutilated members discovered were his.

It would appear that suspicion was immediately attracted to one Venkatasami, with whom the deceased was on bad terms, and this individual was accordingly questioned on the subject by one of the villagers, named Subbu Chetti, who considering his answers unsatisfactory, communicated them to the Moon-siff, and having been directed by the latter to keep an eye on him, took him to his house, where during the course of the following night the said Venkatasami talked in his sleep, and allowed certain expressions to escape from him, which clearly referred to a murder, and which, being heard by Subbu Chetti, were on the following morning reported by him to the Village Moonsiff.

The expressions in question were represented to have been to the following effect. "Dasan catch hold of the hands. Nachan cut off the head. Tandavaraya, Chokan and Venkatachalam catch hold of his leg—come, we may go home after we have deposited the head on the top of an ant-hill."

The words made use of by Venkatasami in his sleep were reported on the following morning by Subbu Chetti to the village authorities, by whom Venkatasami was immediately taken into custody, and taxed with the murder of the missing Perumal, which he at once confessed, criminating the prisoners, whose names had been mentioned by him in his sleep, and who, on being apprehended, likewise confessed their guilt; the 1st prisoner Dasi Nayan delivering up a bill-hook, with which they stated that the murder had been committed, and the 3rd prisoner Venkatachalam a razor, with which it was alleged that the 2nd prisoner Nachan, who died previous to the trial before the Court of Circuit, had cut off the private parts of the deceased.

The prisoners and Venkatasami, who died suddenly before leav-

22d September, 1834.
The case of Dasi Naya-
kan and 4 others.

ing the Talook, and was supposed to have poisoned himself, repeated their confessions before the Head of District Police, and pointed out to him the spot where the murder had been committed.

They assigned, as the motives for its commission, the enmity which had existed between Venkatasami and the deceased in consequence of the latter having recently forbidden the former to continue an intimacy which he had formed with his concubine, and the circumstance of the deceased having a few days before, confined the 1st, 2nd, 3rd and 4th prisoners in the stocks for some petty offence.

The 5th prisoner Chokan, a boy of 18 years of age, stated that he had been persuaded by the 1st prisoner, with whom he was on terms of great intimacy, to join in the murder of the deceased.

They stated that the deceased had been inveigled to the spot by Venkatasami, under a promise of giving him a sheep; that he and Venkatasami were sleeping on the ground when they arrived, and that, after awaking Venkatasami, they all fell upon the deceased; that the 2nd and 1st prisoners successively struck him on the neck with the bill-hook, and severed his head from the body; the 3rd, 4th and 5th prisoners and Venkatasami holding his legs and arms; after which the 2nd prisoner cut off his private parts with a razor, and Venkatasami placed them in his mouth; and that they then cut off the arms and legs and left the spot; Venkatasami having previously placed the head upon the ant-hill on which it was found. The only parts of the body discovered were the head and arm with a portion of the trunk; the remaining parts were supposed to have been carried off by wild beasts.

The prisoners all retracted their confessions before the Criminal Court, and the 2nd prisoner Nachan having died in Jail previous to the trial before the Court of Circuit, the surviving prisoners pleaded not guilty before that tribunal, and endeavoured to prove their innocence by alibis, which however they entirely failed to establish.

The Judge on Circuit (W. D. Davis,) in concurrence with his Mahomedan Law Officer, considered the evidence sufficient for the

22d September, 1831.
The case of Dasi Naya-
kan and 4 others.

conviction of all the surviving prisoners, and recommended that they should be sentenced to transportation for life ; stating, however, no reason for his recommendation that they should be exempted from the prescribed penalty of death.

By the Court of Foujdaree Udalt, A. D. Campbell.—“ I am of opinion that each of the four surviving prisoners are fully convicted, on their Talook confessions, most amply proved, and corroborated by the strongest testimony, of the murder with which they were charged.”

“ It was committed from motives of revenge upon the Taliar of the village, by the 1st, 3rd and 4th prisoners on account of their having been put in the stocks for theft, and by the person, who had poisoned himself, on account of jealousy. The 1st prisoner aided in severing the head from the body, and the other surviving three all took an active part in this most horrible butchery ; the private parts being placed in the mouth of the deceased, who was hacked to pieces in the most barbarous manner, and the blood preserved, in a pot to be offered to the Goddess. I see not clearly the motive of the 5th prisoner, but his guilt is evident, and all seem to have been equally active in this most horrible murder.”

“ I do not think that the ends of justice will be answered, unless the extreme sentence of the Law is passed upon the 1st prisoner and upon the 3rd also. I deem the 4th and 5th equally liable to it ; but, as the fourth may have been swayed by his elder brother, the 3d prisoner, and is only 20 years of age, and the 5th is only 18 and his motive is not evident, I will not refuse to join either of my colleagues in a sentence of transportation on the last two.”

John Bird.—“ This is one of the most brutal murders I ever read of, and it is quite clear by the repeated confessions of the prisoners that it was premeditated by all of them. It is, I conceive, quite impossible to doubt the guilt of all the prisoners, and I can see no grounds upon which we could be justified in remitting the extreme penalty of the Law in favor of any of them. I am of opinion that the 1st and 3rd should be hanged in chains on the spot where the murder was committed, and the other two at the usual place of execution.”

22d September, 1834.
The case of Dasi Nayan
kan and 4 others.

T. A. Oakes—"I consider this a most cruel
"and premeditated murder which requires an
"exemplary punishment. I therefore concur in
"the punishment proposed by Mr. Bird."

NOTE.—Upon receiving the warrant for the execution of the prisoners in this case the Joint Criminal Judge of Cuddalore (R. Neave) addressed a letter to the Court for the purpose of inducing them to mitigate the sentence passed upon the 5th prisoner, Chokan, upon the ground of his youth, of the influence which the 1st prisoner was shown to have exercised over him, and of the fact that in his confession before the Head of Police, upon which Mr. Neave inferred that his conviction was based, it was not expressly stated that he had actually assisted in the commission of the murder.

The Joint Criminal Judge also forwarded with his letter translations of depositions delivered before him by the several prisoners upon their sentences being communicated to them, asserting their innocence of the crime of which they had been convicted and applying for the examination of further evidence in their defence, which application however he stated that he had not complied with, being apparently satisfied that the plea advanced by the prisoners, that their confessions had been extorted from them, was in this instance untrue.

The Judges of the Foudaree Udalt disapproved of the Joint Criminal Judge's conduct in urging the mitigation of a sentence of death passed upon a deliberate consideration of the record of the trial, no facts having been stated by him in his letter which were not known to the Court when the sentence was passed, and the following letter was accordingly addressed to him in reply.

To

The Joint Criminal Judge of the Auxiliary Court at Cuddalore.

SIR,

"With reference to your letter of which the date is not specified, but which was received in this Office on the 9th instant, submitting reasons why the sentence of death passed by the Foudaree Udalt against the 5th prisoner in Case No. 16 on the Cuddalore Calendar for the 2nd Session of 1833, should be mitigated, I am directed by the Judges of this Court to state that the arguments advanced and circumstances detailed in your communication have failed to demonstrate to them the propriety of making any alteration in the decision to which they have already come.

I am further directed to convey to you the opinion of the Court that you were not justified in thus recommending the mitigation of a sentence, passed, as you must be aware, after a most deliberate and painful consideration of all the circumstances of the case, and that the taking of written examinations from the prisoners upon the occasion of communicating to them their sentence, was an unauthorized and highly improper proceeding."

I have, &c.,

(Signed) T. H. DAVIDSON,
Head Asst. Register.

13th Oct. 1834.

PARAYAN AYYAPPAN, PAGALI,
PARAYAN CARUMBAN, PALATI,

Versus

- | | |
|----------------------------|----------------------------------|
| 1. CHAKKAMALAYATA GO- | 12. PUTUPARAMBIL RAMAN, |
| VINNA MENON, | 13. PUTUPARAMBIL AYYAP- |
| 2. PILAPADATIL KELAPAN | PAN, |
| NAIR, | 14. CHARAPARAMBIL CHEL- |
| 3. EZUKOTTIDIL PONALA | LU, |
| KOPU NAIR, | 15. PARAMEL ITTIRARAPAN |
| 4. POYATA SHANGARAN | NAIR, |
| NAIR, | 16. PARAMEL KANDARA NAIR, |
| 5. MANGUT SHEKARAN | 17. VELARATODIL CHENNAN, |
| NAIR, <i>alias</i> SHANGA- | 18. AYAKARI KRISHNA NAIR, . |
| RAN NAIR, | 19. NAVAYATA KRISHNA NAIR, |
| 6. KADAVULLI PUTTANVI- | 20. ERATHA KRISHNAN NAIR, |
| TIL COONJAN NAIR, | 21. VALIAVITIL KRISHNA ME- |
| 7. ACHATA KELACHAN | NON, |
| NAIR, | 22. VALIAVITIL ITTIPODASHA |
| 8. VELLARAKAT ITTINAN | NAIR, |
| NAIR, | 23. PANDALIL PANJU, <i>alias</i> |
| 9. CHAKKAMALAYATA GO- | PANJAN, |
| VINAN NAIR, | 24. PUDUPARAMBIL CUNJAN, |
| 10. KUNJAN, SON OF PAVU, | 25. KUTTIPALAKEL COONJAN, |
| 11. PUTUPARAMBIL PULLI, | 26. VELUTEDATA NARANAN, |
| 27. KURUKAT RAMAN NAIR. | |

Charge—Murder.

8th December, 1834.

The case of Chakkamala-
yata Govinna Menon
and others.

In this case, in which
certain of the prison-
ers were convicted of
certain acts of violence
accompanied with
murder, their gross ig-
norance and supersti-
tion, and their belief
that sorcery had been
practised by the per-

The prisoners were tried at Calicut at the 2nd
Session of the Court of Circuit for the year 1834
upon an indictment charging them with having
at six o'clock on the morning of the 24th May
1834, in company with the inhabitants of the
Villages of Manicheri, Jirkangote, and Chittoor,
to the number of about 100 persons, proceeded to
the huts of the prosecutors and of the witnesses
in the Manicheri Desham, and on the alleged

8th December, 1834.

The case of Chakkamalayata Govinna Meunon and others.

sons, upon whom the acts of violence charged in the indictment were committed, added to the fact that murder did not appear to have been premeditated, were admitted in palliation of the offence, and the principal was sentenced to transportation for life, and the other prisoners to imprisonment for various periods.

ground that the deaths of the people and cattle of that village, and the protracted labor in childbirth of the 15th prisoner's sister had been caused by the practice of sorcery on the part of the said Parayas, seized and bound with ropes and the fibres of brab-trees, the 1st and 2nd prosecutors' fathers Chakkan and Uniakan, and the 3rd and 4th prosecutrix's husbands Chatan and Chinan, and the witnesses from 3 to 11, and other male inhabitants of the hamlet and with having severely beaten them with sticks, and kicked them, and with having inflicted wounds and bruises on them, pressed them under water in the river, and caused sand to be rubbed into their wounds, causing by the said ill-treatment the instant death of the aforesaid Chakkan and Chatan and that of Uniakan in the course of the same day (the exact time of the death of the latter not being known), and with having caused Chinan, the prosecutors, the witnesses from 3 to 14, and the other male and female Paraya inhabitants of the hamlet, to cross the river, and expelled them from the Company's territory to the Cochin Rajah's district, in consequence of which ill-treatment Chinan also died on the sixth day after.

The Judge on Circuit (W. B. Anderson) concurring with the Law Officer in the acquittal of the 5th, 9th, 13th, 20th, 21st, 22nd, 23rd, 24th, 25th, and 27th prisoners, directed their unconditional release; but considering the evidence sufficient for the conviction of the remaining prisoners, who were likewise acquitted by the Mahomedan Law Officer, referred the trial for the final judgment of the Foudaree Udalut with a recommendation that the 1st prisoner, who, together with one Pollapodatil Menon not apprehended, was shown to have been the principal in the commission of the outrage, and the 12th prisoner, who was shown to have taken a conspicuous part in all the acts of violence committed, should be sentenced to the severest punishment, short of death, which the Court might think proper to award, and that to the 2nd, 10th, 11th, 15th, 16th, and the 3rd, 6th, 7th, 8th, 17th, and 26th, whom he classed in two separate classes with reference to the degree of participation in the crime which was proved against them by the evidence adduced, sentences of temporary imprisonment should be awarded.

8th December, 1834.
The case of Chakkama-
layata Govinna Menon
and others.

In regard to the 4th, 14th, 18th and 19th prisoners, the Circuit Judge stated his opinion that the evidence was hardly adequate for their conviction, and suggested that they should be unconditionally released.

In proposing the sentence to be awarded and recommending that the extreme penalty of the Law should not be enforced on any of the prisoners charged, the Circuit Judge stated the grounds of his recommendation as follows.

"There can, I suppose, be no question that by law persons committing such a crime as that charged against these prisoners, are guilty of nothing less than murder. It is sufficient to constitute this crime that, as in the present case, the lives of several persons were lost in the prosecution of an illegal act. It may be said, on behalf of the prisoners, that they did not in the outset of their proceedings; violent though they were doubtless intended to be, contemplate taking a single life; and for my part, I cannot believe that they did. I am aware that the crime they have committed, is not the less murder, even though the deaths of the deceased persons may not have been premeditated; but it may perhaps be permitted to urge this point in extenuation of their guilt. There appears to me however, another point which may be urged in extenuation with much greater force; and this, the consideration which must, I think, suggest itself to any person who may read and consider the proceedings in this case, that in committing the crime they did, the prisoners erred in the darkness of ignorance and superstition. In this point of view it is, I think, hardly possible for those who are blessed with the lights of superior knowledge and education, not strongly to commiserate men in the situation of these prisoners. I confess that this is the impression which an attentive consideration of the case has left on myself, and under which therefore I beg, though with the utmost deference, to state my opinion, that the case is one which, under its peculiar circumstances, does not call for the extreme penalty of the law."

By the Court of Foujdaree Udalt. A. D. Campbell, Acting Judge.—"This is one of the most extraordinary cases that has ever come before me."

"It originates in the unhappy belief, prevalent in the Malabar,

8th December, 1834.

The case of Chakkam-
layata Govinna Menon
and others.

“ that Parayas possess the power of sorcery,
“ and of conjuring, from the womb, the living
“ foetus. The Magistrate explains, in his let-
“ ter, the prevalence of this most lamentable

“ notion. The 2nd witness, an intelligent Nair, expressly swears
“ that ‘ a female, of the 6th prisoner’s house, died in labour, and
“ there was the shell of a nut of the brab-tree, in her, instead of a
“ child ;’ and, in the case, in 1829, called up by this Court, it will

“ be found that two poor Parayas, tried for the
“ murder of a female in this manner, were ac-

“ tually brought to *confess* a similar offence ; though the earthen
“ pot, found, with a piece of calf’s skin, in her, was of a size that
“ rendered it impossible to credit its introduction, during life.”

“ I have, on more than one occasion, urged the expediency of re-
“ vising the order of this Court, declaring the practice of sorcery
“ not punishable by law ; because, though I join with others, in de-
“ precating any measure, which would countenance the superstitious
“ belief of any efficacy in such practices, I would, so long as such
“ belief is prevalent amongst the people, go with them, in punish-
“ ing, by law, all who *actually practise* such pretended arts : in order
“ to prevent the natives, in despair of protection from their rulers,
“ being driven to take vengeance into their own hands, and to in-
“ flict personal injury, or even death, upon the innocent victims of
“ popular superstition ; who, without practising such pretended arts,
“ are believed by the public to do so.”

“ In the trial now before us, we have one of the most lamentable
“ instances of this kind, ever placed upon record. The whole of
“ the population in the neighbourhood, rise, with one accord, in
“ the open face of day ; and, in defiance of all law and public autho-
“ rity, proceed to an outrage of the most daring nature. They at-
“ tack, as sorcerers, a whole village of Parayas, beat, inhumanly and
“ promiscuously, the whole of them, with their hands tied behind
“ their backs, so as to cause the immediate death of three, and eventu-
“ al death of a fourth ; drive them, in a body, in this bound state, in-
“ to a river ; immerse them, in this helpless condition, under water,
“ so as nearly to produce suffocation ; oblige their own children to
“ rub sand into their wounds ; and, driving the whole into banish-
“ ment, to a foreign territory, raze their paternal dwellings, from
“ their foundations, so that not a vestige remains of the race pro-

8th December, 1834.

The case of Chakkam-
layata Govinna Menon
and others.

“ scribed. I have no hesitation, in saying,
“ that I join the Circuit Judge in refraining
“ from proposing to inflict the extreme penalty
“ of the law upon the principal offender in this great crime, less
“ on account of the unhappy superstition of the natives in the effi-
“ cacy of such arts, than because our refusal to punish the preten-
“ ders who practise them renders the people desperate of any re-
“ medy from the law.”

“ I am of opinion that the 14th prisoner should be acquitted,
“ and released on the ground that what evidence there is respect-
“ ing him, is in his favor.”

“ The evidence of the 2nd, 4th and 6th witnesses against the 4th
“ prisoner, and the testimony against the 18th and 19th prisoners
“ go to insulated facts, sufficient to prove their presence on the oc-
“ casion; but, uncorroborated by the many others who were pre-
“ sent, I do not deem either sufficient for conviction.”

“ I would therefore acquit and release the 4th, 14th, 18th, and
“ 19th prisoners, in addition to the 5th, 9th, 13th, 20th, 21st, 22nd,
“ 23rd, 24th, and 25th prisoners, released by the Circuit Judge.”

“ The evidence, I am of opinion, is sufficient for the conviction
“ of all the remaining prisoners, viz., the 1st, 2nd, 3rd, 6th, 7th,
“ 8th, 10th, 11th, 12th, 15th, 16th, 17th, and 26th.”

“ I consider the 1st prisoner, who directed and personally super-
“ intended this great crime, to deserve transportation;—and, as
“ he is a wealthy man, I would impose upon him also a fine to
“ Government of 500 Rupees, recommending the Government to
“ cause the Collector to place a similar sum at the disposal of the
“ surviving sufferers, for the restoration of their huts, trees, &c.”

“ The next in guilt, I concur with the Circuit Judge, is the 12th
“ prisoner; whom I would sentence to 14 years’ imprisonment, in
“ banishment.”

“ The 2nd prisoner, proved by the two first prosecutors to have
“ beaten the 2nd deceased; the 6th prisoner, proved by them to
“ have beaten the 1st deceased; the 10th prisoner, proved by the
“ three first prosecutors, and the 3rd, 4th and 11th witnesses, to have
“ beaten the 3rd deceased; the 11th prisoner, proved by the three
“ first prosecutors and 11th witness to have beaten the 4th deceased,
“ who is proved by the 11th witness to have named him as his
“ murderer; and the 15th and 16th prisoners, proved by the two

8th December, 1834.

The case of Chakkam-
layata Govinna Menon
and others.

“ first prosecutors and the 3rd, 8th and 11th
“ witnesses to have beaten the 2nd deceased;
“ I would sentence to 14 years’ imprisonment,
“ in irons.”

“ The 3rd prisoner, though proved by the two first prosecu-
“ tors, and the 11th witness, to have beaten the 4th deceased,
“ who also accused him, as proved by the latter, showed more
“ humanity than the others, in offering the sufferers water, and
“ may be classed with the 8th prisoner, who broke the arm of the
“ 10th witness, and the 17th prisoner, proved by the two first
“ prosecutors and the 11th witness to have kicked the 1st de-
“ ceased, but not to have caused his death. These three prison-
“ ers I would sentence to 10 years’ imprisonment in irons.

“ The 7th prisoner, whom the 2nd prosecutor alone charges with
“ having beaten the 3rd deceased, with the 26th prisoner, who, with
“ the 7th, generally acted under the 12th prisoner, I would sentence
“ to the minor punishment of 7 years’ imprisonment.”

“ Our special thanks should be given to the Judge who conduct-
“ ed this trial ; not only for the ability and judgment he has evin-
“ ced, in so difficult a case ; but for his excellent appendices, in
“ elucidation of the evidence, bearing upon each prisoner, admir-
“ ably calculated to facilitate and lighten our labors.”

The Minutes recorded by the other Judges of the Court upon
Mr. Campbell’s proposal to revise the orders of the Court declar-
ing the practice of sorcery not punishable by Law are not forth-
coming ; but it appears that they did not concur as to the expedi-
ency of any revision of the order referred to.

The 1st Judge, T. A. Oakes, agreeing with the Acting Judge
in the sentence proposed ; the Court of Foujdaree Udalut acquit-
ted the 4th, 14th, 18th and 19th prisoners, and convicting the re-
mainder of those, regarding whom the trial had been referred, sen-
tenced the 1st and 12th prisoners to transportation for life, and the
remaining prisoners to imprisonment with hard labor in irons, the
2nd, 6th, 10th, 11th, 15th and 16th for fourteen years, the 3rd,
8th and 17th for ten, and the 7th and 26th for seven years.

In communicating their sentence the Court of Foujdaree Uda-
lut directed that a reward of 400 Rupees should be offered for the
apprehension of the absconded individual Pollapodatil Menon, who
was shown to have taken a principal part in the perpetration of the

8th December, 1834. **outrage which formed the subject of the charge, and they recorded their "approbation of the ability and judgment evinced in conducting the trial by the presiding Judge whose excellent appendices," they observed "were admirably to elucidate the case in all its bearings and greatly to facilitate the disposal of it by the superior Court."**

The Court also reported the circumstances of the case to Government, suggesting the expediency of issuing instructions to the Collector of the District to cause the huts of the sufferers to be rebuilt on the spot where they originally stood, and to indemnify them for any other losses which the perpetration of this atrocious and extraordinary outrage might have entailed upon them, as calculated no less to afford them just relief, than to use the public authority in repressing a superstition attended by such lamentable results.

This recommendation was approved of by the Government and the necessary orders issued to the Collector of Malabar.

GADDALI LAKSHMI,

Versus

CHELLA AKKI.

Charge—Murder.

22nd November, 1834.
Chella Akki's case.

The prisoner was charged with having murdered the female child of the prosecutrix, aged four years, by strangling her and with having roasted her body for the purpose of eating the same.

The trial was held at Guntoor at the 1st Session of the Provincial Court in the Northern Division for the year 1834.

The prisoner was detected by the child's mother in the act of roasting the body of the child, which she had previously murdered, and of which she had, by her own confession, already eaten one of the hands, previous to her apprehension. It appeared in evidence that the crime was committed during the worst period of a severe famine, at a time when men and women and

Prisoner convicted of having strangled a female child and roasted her body for the purpose of eating the same, in consideration of the crime having been committed at the worst period of a severe famine, and when the prisoner was in a state of extreme starvation, the prescribed

22nd November, 1834.
Chella Akki's case.

punishment was mitigated to four years' imprisonment.

children were dying from want of food, and their corpses lying in the streets, and it was deposed that, when the prisoner was apprehended, she was reduced to such a state by starvation, that it was necessary to place her on a cot to carry her before the Head of Police.

The Circuit Judge (G. J. Waters) convicted the prisoner of the crime charged, and referred the trial for the final judgment of the Foujdaree Udalt, expressing his concurrence in the opinion declared in the Futwa of his Mahomedan Law Officer, which pronounced the prisoner liable to Ookoobut, that under the distressing circumstances of the case it would be improper to pronounce either "Kissaas or Deyut."

The Court of Foujdaree Udalt (present J. Bird and A. D. Campbell) concurred in convicting the prisoner of having committed the murder charged against her for the purpose of cannibalism.

The Court of Foujdaree Udalt however considered that allowance should be made for the prisoner, who had brought herself under such distressing circumstances to allay the craving of self-existence by feeding upon human flesh and blood, but being of opinion that, even under such a relaxation of the natural bonds of society, some punishment was necessary to repress the sacrifice of human life and the great crime of murder, the Court of Foujdaree Udalt sentenced the prisoner to four years' imprisonment with labor suited to her sex.

GOVERNMENT,

Versus

ARYACHARI.

Charge—Perjury.

4th March, 1835.
Aryachari's case.

The sentence awarded by the Court of Circuit to the prisoner in this case upon a conviction of Perjury was reversed by the Court of Foujdaree Udalt, partly on the ground that one of the two contradictory deposi-

The prisoner was tried at Chingleput at the 2nd Session of the Court of Circuit in the Centre Division for 1834, upon an indictment charging him with wilful and corrupt Perjury, in having on the 28th February 1833, when a witness in Criminal Case No. 47 of 1833 before the Criminal Judge of Chingleput, deposed in words to the following effect. "The prosecutor Vydy-

4th March, 1835.
Aryachari's case.

tions, in which the alleged perjury was supposed to have been committed, was not material to the issue of any judicial proceeding; the Court of Foujdaree Udulut being of opinion that to bring a case within the scope of the provisions of Clause First, Section II. Regulation III. of 1826 each of the contradictory depositions must be on a matter of fact material to the issue of the judicial proceeding, in the course of which such deposition is given.

It was also held that under the Law above quoted, the contradictory swearing must affect one and the same judicial proceeding, to render a charge of perjury sustainable.

“ chāri called out saying his house was on fire :
 “ when I was going to the prosecutor's house I
 “ saw Venkatasami (prisoner in case 290 of 1834,)
 “ Venkatarayan, and another man whom I do
 “ not know, running away;” and afterwards on
 the 15th October 1834, when examined as a
 witness before the same tribunal touching the
 charge against the same prisoner Venkatasami;
 in Criminal Case No. 290 of 1834, wilfully and
 deliberately deposed in words to the following
 effect. “ I saw these men running from the
 prosecutor's house ; I do not know who they
 were as it was dark.” The said depositions
 being in direct and positive contradiction one
 to the other; and one of them being therefore
 false and corrupt, and the matter of fact thus
 deposed to bring material to the issue of the
 charge then depending against the said Ven-
 katasami. The Mahomedan Law Officer in his
 Futwa convicted the prisoner and declared
 him liable to Ookoobut. Concurring in this

finding the presiding Judge (T. E. J. Boileau) sentenced the prisoner under Clause First, Section III. Regulation VI. of 1811 to imprisonment with hard labor in irons for the term of four years.

On a review of the Calendar the Court of Foujdaree Udulut (present C. M. Lushington, J. Bird and W. Hudleston) observed that from a consideration of the abstract of evidence it appeared to be open to question whether the false swearing was intentional and deliberate, and on a point material to the issue, and they therefore directed that the record of the trial should be laid before them.

On perusal of the record the Court of Foujdaree Udulut considered that the prisoner was not convicted of the crime charged, and they accordingly reversed the sentence passed by the Judge on Circuit, recording the grounds of their judgment in the following remarks.

“ Clause First, Section II. Regulation III. of 1826 declares that
 “ if a party or witness shall wilfully and deliberately give two con-
 “ tradictory depositions on oath, or under a solemn declaration tak-
 “ en instead of an oath, on a matter or matters of fact material to

4th March, 1835.
Aryachari's case.

“ the issue of a judicial proceeding, such party or witness shall be liable to be committed for trial before the Court of Circuit for wilful and corrupt perjury.”

“ In this case the first deposition of the prisoner was delivered upon the investigation of a charge against one person, the second upon that of a charge against a different individual, and the perjury is supposed to consist in the contradiction between his statements in the two depositions touching the persons concerned in the latter case.”

“ It is obvious in the first place that the prisoner's mention in his examination in the case No. 47 of 1833 of Venkatasami, the accused in No. 290 of 1834, could in no way be material to the issue of either judicial proceeding, and the Court of Foujdaree Udalt are of opinion that to bring a case properly within the scope of the provisions of the above Clause, *each* of the contradictory depositions must be on a matter of fact, material to the issue of the judicial proceeding in the course of which such deposition is given.”

“ But further the Clause in question appears to the Court of Foujdaree Udalt to intend exclusively one and the same judicial proceeding; that is to say, its meaning is, that the contradictory swearing shall affect one and the same matter of charge; the object of this Law being to provide for punishment in cases, such as are described in the preamble to ‘ have occurred,’ in which ‘ a party or witness has given two contradictory depositions in regard to the same matter or matters of fact.’ The ‘ cases’ here referred to were exclusively cases in which, upon the preliminary examination, evidence was given, which, on the subsequent trial of the same charge, was contradicted or retracted.”

“ Under this view of the subject the Court of Foujdaree Udalt are of opinion that the prisoner in this case was not liable to be committed for perjury on account of contradiction between his statements in the above two separate cases.”

“ But even admitting that he was so liable, it does not appear to the Court of Foujdaree Udalt that the prisoner committed wilful and corrupt perjury at all, and they therefore deem it necessary to set aside the sentence of the Acting 3rd Judge.”

MASANI,

Versus

1. SANGAN,
2. KALAN,
3. MARAN,
4. MASANAN,
5. PEYAN.

Charge—*Murder.*

16th January, 1836.
The case of Sangan and
others

In this case the plea advanced by the 1st prisoner, that the individual, of whose murder he was convicted, had caused by sorcery the death of certain of his relatives, was rejected by the Court of Foujdaree Adalat on the ground that the murder was premeditated, and that the prisoner, when he committed it, was fully aware of the consequences of the deed; and the 1st prisoner was sentenced to be hanged in chains at a spot in the immediate vicinity of the scene of the murder, the 3rd prisoner to transportation for life, and the 4th and 5th, who were convicted as accessories after the fact, to imprisonment with hard labor in irons for two years.

The fact of several murders having been recently committed in the same part of the country, caused by the superstition which led to the commission of the murder charged in this case, was held to be an additional ground for the enforcement upon the principal of the full penalty of the law.

The prisoners were tried at Coimbatore at the 2nd Session of the Court of Circuit for 1835, the 1st, 2nd and 3rd prisoners being charged with having at noon on the 4th June 1835, at a spot called Kodikal Pallam, on the high road from Kotagherry to Sambanari on the Neilgherry Hills attacked and murdered the prosecutrix's husband Kasim; and the 4th and 5th prisoners being indicted as accessories after the fact by aiding the 1st prisoner in secreting the dead body of the deceased.

The perpetration of the murder was divulged by the 2nd prisoner to the 4th witness for the prosecution, an inhabitant of the village in which the deceased lived, who informed the 3rd witness of what had occurred. This led to the apprehension of the 1st prisoner, who confessed that he had murdered the deceased in the manner stated in the indictment, with the assistance of the 2nd and 3rd prisoners, alleging as his motive for the commission of the act, that the deceased by the practice of sorcery had caused the death of his (prisoner's) two wives, of his six children and of his mother, and of certain other individuals, relatives of the 2nd and 3rd prisoners. He criminated the 4th and 5th prisoners as having assisted in the removal of the body of the deceased to a river, in which it was found

COURT OF FOUJDAREE UDALUT.

16th January, 1836.

The case of Sangam and others.

It was decided by a majority of the Court of Foujdaree Udalt, upon a discussion which arose in this case, with reference to the practice of sorcery, that the enactment of legislative provisions for punishing that practice was inexpedient, as being calculated to strengthen a belief in its validity, and its influence in the minds of the people.

about three miles distant from the spot at which the murder had taken place.

He likewise gave up certain articles which were identified as the property of the deceased.

Two other persons, who were shown to have been present when the murder was committed, were at the recommendation of the Acting Joint Criminal Judge admitted as approvers under the provisions of Section XX. Regulation VIII. of 1802, and stated upon oath before that Officer all the circumstances of the murder, but having retracted their depositions before the Court of Circuit, were committed to take their

trial for perjury and sentenced to imprisonment for that offence.

Before the Criminal Court the 1st prisoner corroborated his original confession, that he and the 2nd and 3rd prisoners had committed the murder, and detailed in the most circumstantial manner all that had occurred on the occasion.

The 2nd prisoner both before the Police and Criminal Court denied having taken any part in the murder or having been present when it was committed but acknowledged that he had been invited by the 1st prisoner to assist in it and that he had subsequently been informed by him that he and the 5th prisoner had actually perpetrated it.

The 3rd prisoner denied having aided in the commission of the murder, but acknowledged that he was present and saw it committed.

The 4th and 5th prisoners confessed that they had removed the body, and thrown it into the river in which it was found.

Before the Court of Circuit both when arraigned and when put upon their defence the prisoners all denied the crime laid to their charge.

The Mahomedan Law Officer of the Court of Circuit convicted the 1st prisoner of wilful murder and declared him liable to Kissaas, and convicting the 3rd, 4th and 5th of having aided and abetted in the commission of the said murder declared them liable to Ookoobut pronouncing the 2nd prisoner to be liable only to Gooman.

In this Fatwa the Circuit Judge (H. Dickinson) concurred, and in referring the trial for the final judgment of the Foujdaree Udalt recommended that the 1st prisoner should be ordered for exc-

16th January, 1836.
The case of Sangam and
others.

cution, that the 3rd prisoner should be transported for life, and that the 4th and 5th prisoners should be imprisoned with hard labor in

irons for the period of five years.

The 2nd prisoner was placed by the Circuit Judge under a requisition of security for one year.

By the Court of Foujdaree Udalt. A. D. Campbell, Acting Judge.—“I concur with the Judge of Circuit, and with his Law Officer and our own, in the conviction of the 1st and 3rd prisoners of the murder charged, and of the 4th and 5th prisoners of having aided and abetted them, after the fact, by the removal and concealment of the corpse.”

“The voluntary confession of the 1st prisoner before the Criminal Court is corroborated by the mark on the neck of the corpse, where he states he inflicted the fatal blow, and the property of the deceased is proved by the 5th, 6th and 7th witnesses to have been found in the two places indicated by him, though part of it had been removed from the one to the other place, perhaps after his arrest.”

“The 3rd prisoner’s confession before the Criminal Court of his presence at the murder, is corroborated by his admission of a still greater degree of guilt to the 3rd and 5th witnesses; and the guilt of the 4th and 5th prisoners is established by their confessions before the Criminal Court and the evidence of the 5th and 7th witnesses in corroboration.”

“In the case No. 1 of the Additional Calendar of Malabar for the 2nd Session of 1834, I joined with the Circuit Judge in refraining from proposing to inflict the extreme penalty of the law, because there the object was to expel a whole tribe from the country, and the deaths caused were not premeditated, but took place in the course of the barbarous treatment, and to exact the oath, by which this purpose was effected.

“Both that and this case have originated in the unhappy superstition of the natives on the efficacy of sorcery, and I circulated to my Colleagues part of my opinion in that case, in the hope that they will join me in recalling the order of this Court declaring the practice of such pretended arts not punishable by law, by which, I continue of opinion that, in this, and similar cases, the natives, in despair of protection from their rulers

16th January, 1836.
The case of Sangam and
others.

"from dangers, which they believe, however
"erroneously, to be real, are driven to take
"vengeance into their own hands, and to in-
"flict punishment even to death upon the innocent victims of
"popular superstition.

"Although in the former case, this defect in the law, rendering
"the people desperate of any remedy, as well as the superstition
"which dictated the act, prevented my proposing the penalty of
"death, I have already explained that the malice was against
"the supposed sorcery, and the tribe *in general*, not against any
"individual, and that the death was not premeditated, but oc-
"curred in the violence of a popular tumult. In this instance
"the contrary is the fact. The malice is declared by the 1st
"prisoner to have been against the deceased individually, the
"murder was premeditated, and the 1st prisoner expressly de-
"clares that he knew at the time, that the act endangered his
"own life."

"Though every consideration should be given to the superstiti-
"ous feeling which dictated this crime, I do not think that in this
"case justice can be satisfied except by the extreme penalty of the
"law; which I am of opinion should be confined to the 1st priso-
"ner. I concur in the other punishments proposed by the Circuit
"Judge, except that, as the 4th prisoner was the son of the 1st,
"and the 5th either the cousin or brother of the 4th, in as much
"nature prompted their screening the murder, which their father
"or uncle had committed, I would reduce their imprisonment to
"two years."

W. Hudleston, 3rd Judge.—"I concur in the conviction of the
"prisoners upon their confessions before the Criminal Court
"and in the sentences proposed by the Acting Judge, viz., the pri-
"soner, 1st Sangam, to suffer death—3rd Maran, to be transported
"for life—4th Masanan and 5th Peyan, to be imprisoned with hard
"labor in irons for two years."

Further minute by W. Hudleston, 3rd Judge.

"I have concurred with the Judge of Circuit and the Acting
"Judge of this Court in opinion, that the 1st prisoner in this case
"should receive sentence of death."

"My attention has since been drawn to the case (reported at
"page 310, Nizamut Udalt Reports of 1827, Vol. I.) of Sheik

16th January, 1836.
The case of Sangan and
others.

“ Soadut, which bears strong resemblance to
“ this case in one remarkable particular, viz.,
“ that this prisoner ascribed to the deceased
“ the destruction of certain of his relatives by sorcery.”

“ The 1st prisoner in his confession before the Acting Joint
“ Criminal Judge confirms his Police confession which contains
“ this statement.”

“ The Law Officers of this Court do not notice the plea, and
“ with reference to the Futwa of the Law Officers of the Nizamut
“ Udalut in the above case, to which I wish the attention of our
“ Law Officers to be drawn, I conclude, that they pass the plea
“ over unnoticed, because it is not supported by evidence.”

“ We, however, act upon the rule of English law, that a confes-
“ sion is to be taken altogether, and not by parcels, and I conceive,
“ therefore, that we must admit the prisoner's allegation, that he
“ acted on the impression affirmed by him.”

“ Section XXXIV. Regulation VII. of 1802 is peculiarly strong
“ on the point, and enjoins the *invariable* punishment of persons
“ putting a man to death on the ground of his practising sorcery
“ as ‘ guilty of murder :’ yet the Court Nizamut Udalut referring
“ expressly to this provision of the Regulations passed a sentence of
“ ‘ three years’ imprisonment in a case of the kind, on the grounds of
“ ‘ the suddenness of the act, *and* the impression which the prisoner
“ appeared to have had that his wife, son, and father had been des-
“ troyed by the practices of the deceased.’ ”

“ My own opinion, until I saw this case, was that we could not
“ allow the plea: but the sentence passed in the case to which I
“ refer by a Court of co-ordinate jurisdiction with this Court, ad-
“ ministering the same law, shakes my confidence in the rectitude
“ of my judgment.”

“ Viewing the conviction of the 1st prisoner as a conviction of
“ murder, and applying to his case the rule that “ alleviating circum-
“ stances” shall form a ground for mitigating the extreme penalty
“ of the law, it does appear to me, that there is sufficient reason for
“ a further consideration of the proposed sentence.”

“ I request the Acting Judge's attention to the above case, re-
“ ported in Bengal, and I shall be glad to learn whether, or not
“ the 2nd Judge assents to these observations.”

16th January, 1836.
The case of Sangam and
others.

"It is not found that the deceased was way-
laid; his encountering the prisoners appear
to have been accidental."

A. D. Campbell, Acting Judge.—"With reference to the Minute
of the 3rd Judge of this day's date, I have most attentively recon-
sidered this trial, as well as the case in Bengal, page 318, Vol. 1st,
of the Nizamut Udalt Reports in 1817 (not 1827, as he states).
I have also examined the cases at pages 56—188, and 196 of
Vol. 2nd, and at page 102 of Vol. 3rd of the same reports, be-
ing all that appear to bear on murder on account of sorcery or
witchcraft."

"There can be no doubt that, in this case, we are bound to take
the entire confession of the 1st prisoner, as given before the
Criminal Court and to believe that he was actuated by the con-
viction, that the deceased had, by sorcery, put to death the pri-
soner's two wives, six children and mother, when the prisoner
inflicted the fatal blows which caused his death."

"I certainly perceive that, in the five cases which I have quot-
ed under the Bengal Presidency, of a similar kind, not one has
been punished by the extreme penalty of the law."

"In the first however, along with the superstition, the Judges
took into consideration "the suddenness of the act," and the
want of premeditation, which in the case quoted in my original
judgment induced me, in that instance, to refrain from capital
punishment. The second, third and last occurred all in the Zil-
lah of Ramgurh, where the people are described as "rude, unciv-
ilized beings," whose superstition is extreme."

"But in the second case, the reason for refraining from capital
punishment is not given, in the third the conviction was for *ho-*
micide not for murder, and in the last the conviction was for *ab-*
duction not for the murder. In the fourth case the prisoners
were distinctly convicted of murder and declared liable, as in the
first case to death, but, as in it, the sentence was mitigated to
imprisonment, though it extended to the period of life, instead
of three years, on the ground of all the circumstances of the case
and the uncivilized character of the inhabitants of that part of
the country."

"Omitting the second, which is an obscure case, the cause for
not proceeding to the extreme penalty of the law in these in-

16th January, 1836.
The case of Sangam and
others

“stances was either that the crime did not
“amount to murder, or was unpremeditated,
“with the exception of the last case in which
“it is expressly stated that ‘the prisoner does not appear con-
“scious of having acted criminally, in his conscience the duty of
“retaliation for the death of his sons appears to outweigh all
“other considerations.’ ”

“Now besides the positive enactment of the law in Section
“XXXIV. Regulation VII. of 1802, which enjoins the *invariable*
“infliction of a capital sentence in cases of this kind, I was ac-
“tuated in the sentence I proposed, by the premeditated nature of
“the crime in this instance, combined with the prisoner’s know-
“ledge at the time of the criminality of the act and the penalty of
“the law ; he says expressly ‘I slew him determining even to give
“up my head if it should be taken by the Government.’ It was
“this consciousness of guilt, which induced the tribunals of our
“own country to execute criminals even below the age of puberty
“who by their acts evinced it, and it was the absence of it appa-
“rently which actuated the Bengal Judges in refraining from it in
“the fourth case above cited.”

“With reference to the late massacre in the vicinity of this
“crime, originating in the same cause, I am sorry that under the
“above impressions I feel myself compelled to adhere to my former
“judgment, and to add my opinion that the 1st prisoner should be
“hanged in chains where the murder was committed.”

“But I shall be most happy to refer the case to Government,
“who may possibly extend to the prisoner that mercy, which un-
“der the law and the facts of the case I do not think I am at li-
“berty to grant, should either of my Colleagues wish it ; I think
“it most desirable at any rate that we should in this instance have
“the benefit of the judgment of the 2nd Judge.”

W. Hudleston, 3rd Judge.—“I also am very desirous of the 2nd
“Judge’s opinion on this case. I do not construe Section XXXIV.
“Regulation VII. of 1802, as prescribing ‘the invariable infliction
“of a capital punishment.’ The Court is not bound to sentence
“to death in *all* cases of murder : and this Section does not speak
“of the case of a person, impressed with a belief that his near
“relatives *had been destroyed* by sorcery, which I have suggested
“as an alleviating circumstance.”

16th January, 1836.
The case of Sangun and
others.

“ But I am by no means confident in the
“ correctness of the opinion which I have ad-
“ vanced on this point.”

“ I have considered with the greatest attention the suggestion
“ of the Acting Judge, that the Foudaree Udalut should revise
“ the order ‘ declaring the practice of sorcery not punishable by
“ law.’ ”

“ By the proceedings of the Foudaree Udalut under date the
“ 2nd July 1817, it is shown that the Cazce-ool-Coozat and
“ Moostees of the Court have declared, ‘ that a confession of
“ sorcery does not subject a person to punishment under the Ma-
“ homedan Law, unless it shall appear that injury has ensued’
“ and the order of the Court of that date directs, that ‘ where in-
“ jury be represented to have ensued,’ the Criminal Judge shall
“ ‘ take evidence as to the overt act charged against the prisoner,
“ and in the event of there appearing to be ground for committing
“ the prisoner to take his trial before the Court of Circuit, that he,
“ the Criminal Judge, do frame the indictment for such overt act
“ aforesaid.’ ”

“ Sorcery not being punishable under the Mahomedan Law, I
“ do not consider it necessary here to inquire, whether, or not,
“ it was properly declared in the above proceedings, that ‘ the
“ Courts of Criminal Judicature are virtually prohibited by Section
“ XXXIV. Regulation VII. of 1802 from trying charges of sor-
“ cery,’ although I am of opinion, that this declaration of the in-
“ tent and meaning of that provision should not be lightly dis-
“ turbed.”

See letter to the
“ Criminal Judge of
“ Chittoor, dated
“ 11th November
“ 1818, para. 4.—Do. to
“ Provincial Court of
“ Circuit Centre Divi-
“ sion of 8th February
“ 1820, para. 14.”

“ Under the Regulations of this Government
“ it is plain, that the practice of sorcery is not
“ punishable : and the only question for consi-
“ deration appears to be whether, or not, there
“ are grounds for recommending the enact-
“ ment of legislative provisions for punishing the
“ practice.”

“ Upon this question, after full consideration, I concur in the
“ opinion given in the letter to the Provincial Court of Circuit
“ in the Centre Division, dated 8th September 1828, namely, that
“ ‘ one almost certain consequence of such an enactment would
“ be to attract more public attention to the thing itself, and to

16th January, 1836.
The case of Sangan and
others.

“strengthen the belief in its validity, and its
“influence in the minds of the people; by
“which more harm would be done, than good
“by the punishment of persons practising such arts, in the very
“few instances, in which it is probable that they could be fair-
“ly convicted.”

John Bird, 2nd Judge.—“I am of the same opinion. I do
“not think that in this case the plea of sorcery should stand in
“the way of the due execution of the full penalty of the law upon
“the 1st prisoner.”

“There is nothing to lead me to believe that the prisoner was
“not fully aware of the consequences of the deed or that he has
“extreme ignorance to plead, and I think there can be no doubt
“that the murder was premeditated.”

“Experience shows that an example is greatly required and I
“am afraid that should mercy be extended on the present occasion
“upon the plea of sorcery it will be productive of mischief.”

“On the other hand the execution of the criminal near the
“spot may have the best effect, and prevent a repetition of the
“horrid scenes which have lately occurred.”

The 1st prisoner was accordingly sentenced to be hanged in
chains at a spot in the immediate vicinity of the scene of the mur-
der, the 3rd prisoner to transportation for life, and the 4th and 5th
prisoners to imprisonment with hard labor in irons for two years.

CANDALI,

Versus

1. MURUGALAN,
2. DOANAN, *alias* PULLAN.

Charge—*Murder.*

12th February, 1836.
The case of Murugalan
and another.

The prisoners, who
were charged with the
murder of fourteen
persons of the Coor-
umber caste, inhabit-
ants of the Neilgherry
Hills were convicted

The prisoners in this case were tried at Coim-
batore at the 2nd Session of the Court of Cir-
cuit for 1835, charged with having on a certain
night (date unknown) in the month of Septem-
ber or October 1834, in company with a gang of
other persons proceeded to the house, in which
the husband of the prosecutrix and his family

12th February, 1836.

The case of Murugalan and another.

by the Judge of Circuit on the evidence of the prosecutrix, who stated that she was an eyewitness of the murder, were acquitted by the Court of Foujdaree Udalt on the ground that there were discrepancies in the Prosecutrix's statements which rendered it unsafe to found a conviction upon her testimony uncorroborated by other evidence.

were living at Andamuttam in the village of Kuntagramam, attached to Ootacamund, forcibly entered therein, attacked and murdered the prosecutrix's husband Bellan and fourteen other persons in it and the adjoining house, wounded the prosecutrix with intent to kill her, and then set fire to the said two houses, whereby the houses and the dead bodies that were in them were consumed.

The murder charged in this case was one of three, alleged to have been committed upon the Neilgherry Hills during the latter part of 1834, wherein fifty-eight persons of the Coorumber tribe were supposed to have been massacred by the Todders, Koters, and Burghers, and the huts in which they lived burnt to the ground.

It appears from a letter addressed by the Joint Magistrate of Malabar to the Magistrate of that district under date the 10th June 1835, reporting the circumstances of the massacres in question, that the Coorumbers were a poor and wretched race of people inhabiting the extensive tracts of jungle that skirt the sides of the Neilgherry Hills, subsisting chiefly on donations of grain, &c. from the other native inhabitants of the Hills, who believed them to be skilled in magic and sorcery, and considered it necessary to consult them previous to the performance of all their various ceremonies, and to ascertain from them the propitious seasons for undertaking the cultivation of their lands. They likewise attributed to them the gift of being able by their incantations to cause the death of those whom they desired to destroy.

"It happened" the Joint Magistrate states, "that a short time previous to the massacre in question some of the chief people and their relatives had died, and in particular the father-in-law, brother-in-law, and wife of one of the head Burghers and two sons of another.

"These deaths were supposed to have originated from the malevolence of the Coorumbers towards them. Being more than ordinarily enraged it was determined totally to exterminate some villages of these poor people, but why the villages, actually destroyed, were selected, I cannot ascertain. Another reason as-

12th February, 1836.
The case of Murugalan
and another.

“ signed for the determination, and which I
“ believe to be true, was that of late the tribe
“ of Coorumbers had been so much on the
“ increase that it was found inconvenient to the other classes to
“ provide in an adequate manner for their maintenance, and that
“ this opportunity was readily seized upon for diminishing their
“ number. A number of Todders and Burghers accordingly com-
“ bined for the commission of this horrid act, and proceeded in the
“ night of some day about last October, (so ascertained from the
“ barley being cut at that season) to a village near Kitur, and having
“ murdered the inhabitants to the number of about thirty-eight, of
“ all ages and sexes, placed their bodies inside the huts and set fire
“ to them. Three or four escaped to tell the dreadful tale, which
“ however was not brought by them at the time to the notice of
“ any of the Police authorities, and it was by the merest accident,
“ that the late Tahsildar being in the neighbourhood in March last,
“ some of the Coorumbers made the matter known to him, and he
“ discovered the ashes and bones of those who had been thus sa-
“ crificed, together with a number of bangles, toe ornaments, &c.,
“ of the deceased.”

Ten persons named by the Coorumbers in question, as having been concerned in the massacre above alluded to, were committed by the Head of Police to the Auxiliary Court at Coimbatore, but were released by the Acting Joint Criminal Judge ; that Officer entirely discrediting the evidence adduced.

Immediately on their release seven of the said prisoners (together with two other persons) were committed by the Assistant Magistrate of Malabar for the murder (which forms the charge in the case to which this report refers) of the prosecutrix's husband and fourteen other Coorumbers, but were released by the Acting Joint Criminal Judge in consequence of the prosecutrix and witnesses having retracted before the Court the statements made by them before the Assistant Magistrate.

The commitment of a third case in which thirteen Todders, three Burghers and one Coorumber were charged with the murder of three Coorumbers near Segoor, on the high road from Ootacamund to that place, was attended with a similar result.

On the reports of these cases being submitted to the Court of Foujdaree Udalut in the Monthly Criminal Reports, followed by

12th February, 1836.
The case of Murugalan
and mother.

a letter from the Magistrate of Malabar, forwarding the report of the Joint Magistrate regarding the several massacres referred to, the Court of Foujdaree Udalt considering that the cases had been in the first instance very imperfectly investigated, owing to the Acting Joint Criminal Judge having been "unfortunately impressed with a notion of the impossibility of the transactions" alleged to have taken place, directed that the prisoners in the two latter cases should be re-apprehended and sent up again with the witnesses to the Auxiliary Court at Coimbatore, with any other evidence that might be forthcoming, and that trustworthy persons should be sent to see that the witnesses were neither tampered with nor intimidated.

The two prisoners in the case, to which this report has reference were finally committed for trial before the Court of Circuit upon the evidence of the prosecutrix, who identified them as the persons who on the occasion referred to in the indictment, entered her hut in company with another person, since dead, beat her cruelly, and murdered the rest of the inmates, six in number.

The Judge on Circuit (H. Dickinson) dissented from the Futwa delivered by the Mahomedan Law Officer, which acquitted the prisoners of the crime charged, and referred the trial for the final judgment of the Foujdaree Udalt, recording in his letter of reference, in the following terms, the grounds upon which he considered convicted of the murder of which they were accused.

"The prosecutrix Candali stated that on the night in question, "at the time of extinguishing lights, the family in the house consisting of her husband, her eldest son Andi, her second son Madan, her eldest daughter Shindi, her husband's sister Madi, and her brother's wife Tippi were sitting down preparatory to retiring to rest, when the two prisoners and Avva Mute, since dead, entered the house with some others, all having clubs in their hands, and beat and killed the whole of the above persons as well as Anjan, the brother of the prosecutrix's husband, his son Kuyan, his wife Kode, his son Bellan and his daughters Hyrogi, Chonne, and Masti, who were in the adjoining house. She stated that the 1st prisoner struck her a blow on the head with a club, by which she received a severe wound which bled profusely, that she was for some time insensible, but after recovering, she

12th February, 1836.
The case of Murugalan
and another.

“ made her escape to the jungle where she saw
“ the two houses on fire, and burnt. She de-
“ clared that she had seen the prisoners pre-
“ viously, and she swore most solemnly, after having been made
“ to look them both in the face deliberately for about half a mi-
“ nute, that they were concerned in the horrid outrage commit-
“ ted on her husband and other members of the family.”

“ It will be found that in a few trifling instances the prosecu-
“ trix on her cross examination differed from the statement which
“ had she given before the Assistant Magistrate and the Acting
“ Joint Criminal Judge. These discrepancies I consider to be but
“ of little moment, for they do not affect the main facts of the case,
“ respecting which her statements have invariably been most dis-
“ tinct and consistent. It is more to be wondered at that so few
“ inaccuracies should be discovered, on closely comparing the ac-
“ counts given by her of the horrible transaction, at considerable
“ intervals of time, than that such errors should appear, considering
“ that the poor woman is of a caste living in the jungles, scarcely
“ within the pale of civilization, and bearing in mind the dreadful
“ state of alarm in which she must have been at the time that the
“ horrible tragedy was acted before her. From the main point, viz.,
“ that the prisoners were two of the wretches who committed this
“ frightful deed, she has never in the slightest degree swerved.”

“ There were originally four witnesses examined to prove this
“ deed of blood by the Assistant Magistrate, but in consequence
“ of the 1st, 2nd and 3rd witnesses having retracted, when examin-
“ ed by the Acting Joint Criminal Judge, they were by order of
“ the Foujdaree Udalt committed to take their trial before the
“ Court of Circuit on the charge of Perjury. Unfortunately I was
“ not able to dispose of these cases in consequence of the per-
“ son who took down the depositions, and others named to prove
“ them, not having reached Coimbatore at the time that I had
“ brought the other business of the Sessions to a close. I told
“ the Acting Joint Criminal Judge that I would remain at Coim-
“ batore for some days if he could inform me that he had any
“ intimation of these witnesses being positively on their way to
“ the Court; but as he was unable to do so, I was compelled to
“ leave the cases to be disposed of by the Judge next proceeding
“ on Circuit.”

12th February, 1836.

The case of Murugalan
and another.

“ The 4th witness Madan also recanted when
“ examined by me. I in consequence direct-
“ ed that he might be committed for trial for
“ Perjury.”

“ The 5th witness, Arthur Mostyn Owen, Esq., Assistant Ma-
“ gistrate of Malabar, was then the only witness who appeared be-
“ fore me, who gave any testimony of avail against the prisoners ;
“ and as his evidence goes to show the undeviating consistency of
“ the prosecutrix’s statement, I cannot but consider it of much va-
“ lue in the case.

“ This witness stated that he had been sent by the Magistrate of
“ Malabar to the Neilgherries for the purpose of making inquiry
“ into the murder of a number of Coorumbers, of which report
“ had been made. He stated that the prosecutrix immediately ap-
“ peared before him and detailed the circumstances, mentioning
“ the names of the two prisoners, and of another person, reported
“ to be since dead, as having been members of the gang. He also
“ stated that three witnesses at the time appeared before him and
“ corroborated the account given by the prosecutrix, that they men-
“ tioned the names of eleven persons, who had been present with
“ the gang committing the murders, that all three mentioned the
“ name of the 1st prisoner, and that two of them named the 2nd
“ prisoner as having been with the gang ; that he then issued a
“ warrant for the apprehension of the persons charged, and when
“ he knew that they had been brought to Ootacamund, he shut
“ the prosecutrix and the three witnesses up in a room in his own
“ house, from which he caused them to be brought singly, and
“ desired them to point out the persons whom they had charged,
“ when all who had named the prisoners as being among the gang,
“ immediately identified them. Mr. Owen stated further that he
“ proceeded to the spot where the murders had been committed,
“ and found the ruins of what appeared to him to have been four
“ huts, but which had recently been burnt down. He observed
“ among the ashes particles of what he thought were bones, but
“ upon this point he could not positively swear. He observed an
“ extensive wound on the back part of the prosecutrix’s head, which
“ was cicatrised over.”

“ The prisoners, when arraigned, as well as when put on their
“ defence, denied the crime laid to their charge.”

12th February, 1836.

The case of Mutugalan
and another.

"The Law Officer acquitted the prisoners
"and declared that they ought to be set at
"liberty; with this Futwah I did not concur."

"That a general massacre of the race of natives residing on the
"Neilgherry Hills, called Coorumbers, did take place at the time
"that the murders described in this trial occurred, and that the
"castes of natives, called Todors and Koters, also residing on the
"Hills, committed this horrid butchery, is a fact of general notorie-
"ty, which no person, who visited the Hills about the time, can
"have failed of hearing. Unfortunately no further evidence of
"these murders having occurred has been obtained, but that of the
"prosecutrix, who witnessed them; but that they did occur, as
"described, is carried home to the conviction of the mind of every
"individual on the Hills, who knew that this race (the Coorum-
"bers) did exist, and that they are now not to be found. The na-
"tural question is, what has become of them? If they have not, as
"charged, been swept from the face of the earth, why do not the
"friends of the prisoners, who possess such influence on the Hills
"find them and produce them before the Court?"

"That the witnesses, who originally appeared and gave evi-
"dence before the Assistant Magistrate, should have recanted, when
"examined before the Joint Criminal Court, cannot be a matter of
"wonder to any person knowing the habits of persons of the sects
"to which the prisoners and witnesses respectively belong. It
"must rather be a subject of surprise that persons of the caste of
"the witnesses should have ever dared to give evidence against a
"Toder."

"That the prosecutrix, poor ignorant creature as she is, should
"have been proof against all the attempts that it is notorious
"have been made to stop her mouth; that she should even be
"alive at the present day to tell her story, considering the deep
"interest that has been taken in the matter by the whole of the
"races of Todors and Koters on the Hills; and savage as she al-
"most is, that she should so pertinaciously have adhered to the
"main facts of the case, are I conceive circumstances bordering on
"the miraculous circumstances in which it is not possible not to
"acknowledge the hand of a Supreme agent, determining that
"the guilty shall be brought to justice."

"That even the Tahsildar and the whole of the Police under

12th February, 1836. "him were in league to suppress evidence
 The case of Murugalan "against the prisoners, and that they report-
 and another. "ed that the prosecutrix was dead, well know-
 "ing at the time that she was alive, and could be produced by
 "them whenever they pleased, is universally declared and believed.
 "Fortunately for them I could not obtain any evidence of the
 "circumstance, or I should immediately have directed the Magis-
 "trate to dismiss them from their situations, or even have adopted
 "other measures against them."

: "In conclusion I unhesitatingly declare that the clear and dis-
 "tinct evidence of the prosecutrix has carried the utmost con-
 "viction to my mind of the guilt of the prisoners. If it depended
 "upon me, I would this instant sign the warrant for their execu-
 "tion. I can only add that it is my hope that the Judges of the
 "Foujdaree Udalut will consider the evidence of this poor woman
 "to be as important as I do, and that these miscreants will meet
 "their deserts. In the event of their being ordered for execution,
 "I would recommend that it should take place on the Hills."

Upon the trial coming before the Court of Foujdaree Udalut the 3rd Puisne Judge, W. Hudleston, dissented from the Circuit Judge in considering the evidence sufficient for the prisoners' conviction, and recorded in the following Minute the grounds of his dissent.

"The only evidence affecting the two prisoners in this case is
 "that of the prosecutrix."

"Before the Assistant Magistrate she deposed that one night,
 "when she and her husband went to bed in their house, a noise
 "having been made, her husband went out and was killed by the
 "two prisoners, and another person, who then entered and beat
 "her, and afterwards murdered certain other persons."

"Before the Criminal Judge the prosecutrix stated, that the
 "two prisoners and others came, when she was lying on the out-
 "side pyal of her house, wounded her, and then entered the house,
 "that the blood filled her nose, eyes, and face."

"Before the Court of Circuit the prosecutrix deposed that, at
 "the time of putting out lights the two prisoners and another en-
 "tered her house, killed her husband, and all the other persons
 "there, and wounded her; that it was dark in her house, but

12th February, 1836.

The case of Murugalan
and another.

“ they soaked a cloth in ghee at Anjan’s house
“ and entered her house and lighted it, that
“ they first beat her, and, afterwards her hus-
“ band and the others, that as soon as they beat her, she fell
“ down senseless,—in answer to the 19th question (p. 72) she stat-
“ ed, that it was dark when they beat her, and ‘ they afterwards got
“ a light.’ ”

“ I cannot convict the prisoners on such evidence as this. Not
“ only do the discrepancies between her several depositions appear
“ to me to be material, but on her cross-examination before the
“ Court of Circuit she states that it was dark when she was beaten
“ and that she immediately became senseless, and yet the Court
“ was called upon to believe, that she identified the prisoners.”

“ In my opinion the prisoners must be acquitted.”

The trial was then referred to the Acting Judge, (A. D. Camp-
bell,) who suggested that it would be desirable “ to have before
“ the Court in the original language the depositions given by the
“ prosecutrix before the several tribunals, with the opinion of the
“ Circuit Judge who tried it, whether any, and if any, which of the
“ above discrepancies could be accounted for by mistranslation.”

The original depositions having been transmitted, and it appear-
ing that all the discrepancies noticed by the 3rd Judge existed in
the original evidence given by the prosecutrix, the Acting Judge
concurred in the acquittal of both the prisoners of the crime laid
to their charge.

In recording his concurrence the Acting Judge observed that
he gave the prosecutrix every credit as an honest witness, but that
if, as she swore, it was dark when she was beaten, and she then
became senseless, it is not possible that she could have identified
the prisoners. “ Though I think” continued the Acting Judge
“ she has satisfied her own mind that her own impression is cor-
“ rect, she has not satisfied mine. Turn to her answer to the 18th
“ question at page 72. I conceive her evidence as to the prison-
“ ers having been actively engaged in the murder to be mere *in-*
“ *ference* from her previous impression that she saw them there,
“ of the correctness of which I am not satisfied. Upon her own
“ uncorroborated and discrepant evidence I cannot arrive at the
“ conclusions of the Circuit Judge, and I concur with the 3rd
“ Judge in the acquittal of the prisoners.”

12th February, 1836.
The case of Murugalan
and another.

The prisoners were accordingly unconditionally released.

N. B.—The question and answer referred to by the Acting Judge were as follows.

Q. Did you see either of the prisoners beat any one of the fourteen persons in your house or in that of Anjan?

A. I was first struck and fell down insensible, my face being all covered with blood. As soon as they entered in I heard a great cry in my house and in that of Anjan, but I did not see the prisoners strike any one.

MUTTUCARAPPAN,

Versus

KUNDAPPAN.

Charge—Attempt at Murder and Robbery.

21st March, 1836.
Kundappan's case.

The prisoner in this case was convicted of Robbery accompanied with an attempt at Murder and was sentenced by the Court of Foudaree Udalut to receive 195 lashes and to be transported for life under the provisions of Clause second, Section II. Regulation I. of 1825.

The applicability of the above provisions of the Law to the offence proved was discussed by the Judges of the Foudaree Udalut and decided in the affirmative.

The prisoner in this case was tried at Madura at the 1st Session of the Court of Circuit for 1836, upon an indictment charging him with having taken from the neck of the prosecutor's son, a child of nine years of age, a silver ornament valued at Rupees 4, and thrown him into a well with intent to cause his death.

The child was discovered in a well by a passer-by in a state of insensibility, but recovered on being taken out and the proper remedies applied, and stated that the prisoner had thrown him in, after having robbed him of an ornament which he had on his person. The prisoner was immediately apprehended and confessed the charge, stating that he had pawned the jewel to a gold-smith by whom it was given up.

The crime charged being fully established, the trial was referred to the Court of Foudaree Udalut, with a recommendation from the Judge on Circuit (G. M. Ogilvie) that the prisoner should be sentenced to 14 years' imprisonment with hard labor in irons.

The Court of Foudaree Udalut (present J. Bird, W. Hudleston and A. D. Campbell) concurred in the prisoner's conviction, but

21st March, 1836.

Kundappan's case.

considering that the punishment proposed by the Circuit Judge would be insufficient to meet the demands of justice, sentenced the prisoner to receive 195 lashes and to be transported for life, under the provisions of Clause second, Section II. Regulation I. of 1825.

This trial having elicited a discussion between the Judges of the Foujdaree Udalt in regard to the provisions of the Law applicable to the case, the minutes recorded thereon are annexed.

W. Hudleston, 3rd Judge.—“This case must be laid before another Judge, as I do not concur with the Judge of Circuit as to the sentence, which should be passed.”

“I consider the prisoner convicted of the charge. His guilt is as great as it would have been, if the child had perished, and I am of opinion, that the sentence prescribed by Clause second, Section II. Regulation I. of 1825 should be passed upon him.”

John Bird, 2nd Judge.—“I concur as to the conviction of the prisoner and as to the extent of punishment to which he should be sentenced, but it appears to me that it may be proper to pass sentence under Clause third, Section VII. Regulation XV. of 1803, because I think that Clause second, Section III. Regulation VI. of 1822 cannot strictly be made applicable to this case; it applies, I think, to thefts from the person, only when committed in ‘a house, warehouse, or other place’ of that description, as shown in the preamble.”

“I know of one case however, in which, under similar circumstances, we passed sentence under the Section referred to, and this is very possibly a wrong construction, and, if so, I should be glad to have my doubts removed.”

W. Hudleston, 3rd Judge.—“Clause second, Section III. Regulation VI. of 1822 provides that ‘in all cases of theft, *whether* in a house, warehouse or other place’ (meaning place used for the custody of property I suppose) *or* from the ‘person of another,’ if the theft or the attempt to commit the same shall have been accompanied with an attempt to commit murder, &c. the accused, if convicted, shall be liable to penalties, which are specified in Clause second, Section II. Regulation I. of 1825.

“It appears to me that the ‘or,’ last used immediately before the words ‘from the person,’ disjoins that offence from the offence of theft ‘in a house, warehouse, &c.’ and contemplates theft

21st March, 1836.

Kundappan's case.

“ from the person, as another crime to which
 “ the provisions are extended in like manner as
 “ they are first made applicable to stealing ‘ in
 “ a house,’ &c. when the thing may *not* be stolen from the person
 “ of an individual.”

“ If this construction be *not* adopted, an attempt to commit murder in a theft from the person will be punishable only by fourteen years’ imprisonment, which I think the legislature could not possibly have intended.”

• “ Section II. of this Regulation provides for house-breaking with intent to steal, and Section III. for theft in a house, without breaking, *and* for theft (as I conceive *wherever* committed) ‘ from the person of another.’ ”

“ I am confirmed in this opinion by the provisions of Section IX. Regulation I. of 1825, and by the reference made in Clause second, Section III. Regulation VI. of 1822 to the definition ‘ of robbery by open violence,’ contained in Clause first, Section III. Regulation XV. of 1803.”

“ Clause third, Section VII. Regulation XV. of 1803 is inapplicable to a case of robbery or theft : and if the Court determine that Section III. Regulation VI. of 1822 does not apply to this case, it must, I conclude, be disposed of in the same manner, as is described in cases of robbery by a single unarmed individual, which will restrict the punishment to fourteen years’ imprisonment under Section XXI. Regulation VII. of 1802.”

A. D. Campbell, Acting Judge.—“ I concur in the conviction of the prisoner, and in the sentence of transportation proposed by the 3rd Puisne Judge.”

“ I am of opinion that under Clause second, Section III. Regulation VI. of 1822 all theft, in *any* place, or ‘ from the person of another,’ attended by an attempt to murder, is punishable under Clause third, Section II. thereof. For though, Section II. in treating of the crime of *breaking* makes a distinction between ‘ a place of habitation,’ or a ‘ place used for the custody or preservation of property,’ and those places where neither person nor property is usually kept, the breaking into which is very improbable, and can hardly constitute a crime ; when it comes to treat of *theft* in Section III. this distinction is necessarily lost, that crime being impossible, where *neither person nor property exists*,

21st March, 1836.

Kundappan's case.

“ and it therefore to a house, and warehouse
 “ rightly adds ‘*or other place*,’ meaning there-
 “ by *any place*, ‘or from the person of another,’
 “ including theft of all kinds, whatsoever.”

“ Besides the chief object of the Law is to punish uniformly
 “ violence to the person, when attended by circumstances endan-
 “ gering life, or otherwise, whenever such violence is committed,
 “ either in prosecution of theft from the person, or wherever pro-
 “ perty may be, or by breaking into places used for the protection
 “ either of the person or property. It is this violence which the
 “ law punishes by increased penalties, and it leaves this violence to
 “ the minor punishments of the Mussulman law generally, when
 “ committed without any attack upon property, merely upon the
 “ person, unsecured by a closed habitation.”

J. Bird, 2nd Judge.—“ I have no objection to the construction
 “ given by my Colleagues as respects this case.”

PATUR TEYI AMMA,

Versus

VELUTEDATA UNNI KUTAN.

Charge—*Murder*.

19th May, 1836.
 Velutedata Unni Kutan's
 case.

The prisoner was charged with the murder of
 the prosecutrix's niece Patur Cherrappenna and
 was tried for that offence at the 1st Session of
 the Court of Circuit for the year 1836, holden
 at Calicut for the Jail delivery of the Zillah of Malabar.

The prisoner in this
 case was convicted by
 the Judge of Circuit
 of the murder of a wo-
 man with whom he
 had been engaged in a
 criminal intrigue; his
 conviction being prin-
 cipally based upon cer-
 tain extra judicial con-
 fessions alleged to
 have been made by
 him.

He was acquitted by
 the Court of Foujda-
 ree Udalut on the
 ground of discrepan-
 cies in the evidence to

The facts of the case are briefly as follows.
 The deceased, a married woman, who was proved
 to have been engaged in a criminal intercourse
 with the prisoner, on account of which they had
 been expelled from their respective castes, left
 her home in the month of May 1835, having
 previously informed her father, the 1st witness,
 in whose house she lived, and her aunt, the pro-
 secutrix, that it was her intention to go away
 with the prisoner, but not specifying what was
 to be their destination. The prisoner was prov-

21st March, 1836.

Velutedata Uuni Kutan's case.

the said confessions, and of the insufficiency of the proof of the "corpus delicti;" the evidence to the identification of certain remains, which were supposed to be those of the woman with whose murder the prisoner was charged, being considered inconclusive.

ed to have left his village on the same day, and to have returned alone after an absence of two months, when, at the prosecutrix's request, he was questioned about the deceased, but denied all knowledge of her, and, having been taken before the Tahsildar and detained for ten days at the Talook Cutcherry, was released on bail, there being then no evidence forthcoming to connect him with the fate of the deceased. The prosecutrix was subsequently informed by the 2nd witness, one of the head men of the village in which she lived, that he had heard from the 3rd witness, a brother of the prisoner, that the latter had heard from the 8th witness, that the prisoner had confessed to him his having murdered the deceased in company with two brothers of the 8th witness, and that he had thrown her body into a well. Upon this the prisoner was re-apprehended, and several wells were searched, in one of which some bones and hair (the latter evidently belonging to a female), and subsequently a knife or chopper were found; the brothers of the prisoner, the 3rd, 9th and 10th witnesses, were likewise apprehended upon suspicion of having been concerned in the murder, but were released by the Police and sent up as witnesses to the Criminal Court. They deposed to the prisoner having confessed to them the murder of the deceased, stating that he made this confession to induce them to re-admit him into their caste. The 3rd witness likewise stated that he had been previously informed by the 8th witness, the prisoner's brother-in-law, of the prisoner having committed the murder in company with two of the 8th witness' brothers. On this point the evidence of the 3rd witness was somewhat contradictory; his statement before the Criminal Court being to the effect that the 8th witness' information was also hearsay from the 4th witness, a circumstance which was omitted in the other depositions given by him both before the Police and before the Session Court. The 8th witness stated that the prisoner had confessed to him that he had alone murdered the deceased, but denied that he (the deponent) had communicated this confession to the 3rd witness, as was asserted by the latter. The 2nd witness, the headman of the prosecutrix's village, deposed to the prisoner having requested him to assist him in obtaining his re-ad-

21st March, 1836.
Velutedata Unni Kutan's
case.

mission into his caste, and having then assured him that there would be no more trouble on account of the deceased, who could not possibly return. Two witnesses were cited to prove that the deceased was last seen in company with the prisoner, one of whom deposed to having seen the prisoner on the day after the deceased left her home, walking with a woman, the description of whose appearance corresponded with that given by the prosecutrix of the deceased; the other individual examined on this point had seen on the day in question two persons walking together, who, from his description of them, were inferred to have been the prisoner and the deceased; but there was no direct evidence to their having been seen together after the deceased was missed.

The knife found in the well was not identified.

The prisoner pleaded not guilty throughout, denying that any criminal intercourse had existed between the deceased and himself, and ascribing to malice the statements made by his brothers, the 3rd, 9th and 10th witnesses, in regard to the confession alleged to have been made by him of the murder laid to his charge.

The Mahomedan Law Officer in his Futwa convicted the prisoner of the murder, and declared him liable to Ookoobut, Kissaa being barred on the ground that suspicion attached to the brothers of the 8th witness of having been concerned in the commission of the crime.

In this Futwa the Judge on Circuit (W. B. Anderson) concurred, considering that the fact of the prisoner having confessed the murder to the 3rd, 9th and 10th witnesses, and, at a different time and place, to the 8th witness, was clearly established, notwithstanding the discrepancies observable in the evidence of the 3rd and 8th witnesses, and considering these confessions corroborated by the discovery of the bones and hair above referred to, he recommended that the prisoner should be sentenced to undergo the extreme penalty of the Law.

By the Court of Foujdaree Udalut—A. D. Campbell, Acting Judge.

"I am of opinion that, although the evidence in this case bears strongly against the prisoner, it is insufficient to justify his conviction of the murder charged against him."

21st March, 1836.
Velintadata Unni Kutan's
case.

"The remains found are not proved to be those of Cheruppenna, who is missing, but not proved to be dead. They seem to have been those of a female, but this is all that has been proved respecting them."

"I can find no proof of the fact, which appears to me most erroneously alleged in the futwa of our Law Officers, that they were discovered 'in a well pointed out by the prisoner.' On the contrary, upon alleged confessions from him, that he had murdered the said female near a Pagoda, where there were numerous wells, five were searched, unsuccessfully, and they were found in a sixth well in his absence from the spot. Our Law Officers should explain their remark which, in such a case, seems to me to exhibit strange carelessness on their part."

"The Magistracy have failed entirely in tracing the clue, which the discovery of the chopper-knife in the well might have afforded."

"The only other evidence against the prisoner consists of his alleged confessions, for the evidence as to a man having been seen by one witness, and the prisoner by another, in company with a woman, is no ground for the inference that that female was Cheruppenna."

"If credible, the evidence to his confessions of the crime, would no doubt convict him. But the 3rd witness at page 17 originally stated that all his information was hearsay from the 8th witness, at the house of the 8th witness; whereas at page 51 he says that the 8th witness' information was also hearsay from the 4th witness, though he goes on to say that the prisoner confessed to himself in the presence of the 9th witness, whereas the 8th witness, page 144, declares that he never said one word about the matter to the 3rd witness, who for a year had never come to his house, and that the confession of the prisoner was direct to himself; the 9th witness, who with the 3rd and 10th are the brothers of the prisoner, no doubt has consistently spoken to the prisoner's confession, and is before the Circuit Court supported by the 10th witness, who before the Criminal Court deposed, rather that the prisoner had left the fact to be inferred, than that he absolutely admitted the crime."

21st March, 1836.
Velutedata Unni Kutau's
case.

"Now the discrepancies in this testimony combined with the long silence of the parties respecting it, the prisoner's denial, and the want of proof of the demise of Cheruppenna, though it leaves on my mind a strong impression against the prisoner, does not constitute proof for conviction; which, on such testimony, I should deem dangerous."

W. Hudleston, 3rd Judge.—"The able and experienced Judge of Circuit, who tried this extraordinary case, states in the sixth paragraph of his letter of reference his opinion, 'after the most careful consideration of all the circumstances' that 'there cannot be a doubt that the prisoner did actually tell his brothers (the 3rd, 9th and 10th witnesses) that he had murdered the deceased;' 'as also that he gave the same information to the 8th witness at a different time and place;' and that 'there can be as little doubt that the bones and hair, particularly the latter, found in the well, are those of the deceased female.'"

"So strong an opinion from such a Judge has, I confess, great weight with me."

"It appears to me, (but on this point I am anxious to have the opinion of the 2nd Judge, by whom at all events so remarkable a case should I think be considered), that the search, which led to the discovery of the remains, was undertaken in consequence of the prisoner's indication of the situation of the well, in the confessions referred to by Mr. Anderson."

"Those confessions, moreover, receive, in my opinion, strong corroboration from the testimony of the 2nd witness, that the prisoner told him, that the woman could not *possibly* appear again."

"It is in evidence that the unfortunate deceased, of whose violent death I cannot entertain a doubt, mentioned an appointment with the prisoner to go away with him; and it is proved, that they were both missed, at the same time, from the neighbourhood."

"It seems clear, that the 3rd and 10th are unwilling witnesses against the prisoner."

"The prisoner's defence contains a denial of facts, fully established, such as his intercourse with the unfortunate woman."

21st March, 1836.
Velutedata Uani Kutan's
case.

"The prisoner named witnesses to an alibi, but dispensed with their testimony."

"I cannot do otherwise than state my opinion, that the prisoner is convicted: but, as above stated, I wish to have the benefit of the 2nd Judge's view of this case."

"The apprehension of the prisoner's relations at first on suspicion of having been concerned in this murder has given an unusual appearance to the proceedings of the Police Officers, and is calculated to raise, at first sight, a distrust of their evidence: but the suspicion not having been supported by any proof against those persons, they are clearly competent witnesses, nor is their credit affected by the circumstance."

John Bird, 2nd Judge.—"The prosecutrix and the 1st witness, the one the sister, and the other the father of Cheruppenna, prove that, when it became notorious that the said prisoner and Cheruppenna had criminal intercourse together, they were both turned out of their respective castes. This fact is also corroborated and proved by several other witnesses, and that such criminal intercourse did exist, we have further the evidence of those two persons, who deposed that Cheruppenna admitted the fact to them."

"Those two persons, as well as the 6th witness, have proved, that a few days previous to Cheruppenna's departure, she told each of them, that she was about to go away with the prisoner; and from the evidence of these three witnesses, as well as from the corroborative statements of the 3rd and 9th witnesses to the same fact, I consider it unquestionable that the prisoner went off on the same day as Cheruppenna went. The fact of their going together is in my opinion very strongly corroborated by the evidence of the 4th witness, and partially so by that of the 5th. Upon the whole I consider it proved by the strongest presumptive proof, that the prisoner and Cheruppenna went away together on or about the evening of 13th Idavam, corresponding with the 25th of May 1836."

"I see no reason whatever to doubt the truth of the testimony given by the prisoner's brothers, namely, the 3rd, the 9th and the 10th witnesses, as to the prisoner's confession. I consider it clearly proved that the prisoner confessed the murder of Cheruppenna and that he had thrown her body into a well in the

21st March, 1836.
Velutedata Unni Kutan's
case

"neighbourhood of the Vettakaramagan Pagoda,—and there is evidence, though not quite conclusive from want of further proof, easily supplied, that in consequence of such confession, information was given to the Police, from which the wells in the neighbourhood of the said Pagoda were searched, the bones and hair of a human being found in one of them."

"If this body had been proved to be that of Cheruppenna, I should not have felt the least hesitation in passing sentence of death upon the prisoner, but upon this most material point the evidence is, in my opinion, somewhat defective, and I propose that further inquiry shall be made."

"I find at page 80 copy of a letter from Mr. Assistant Surgeon Munro from which it appears, that after examination of certain bones and hair, from the absence of the bones of the feet and hands, and of certain other bones of the body, he was not able to ascertain decidedly whether the bones were those of a male or female, though from the appearance of the hair he might be induced to suppose it a female."

"It does not appear that the bones taken from the well upon the second search ordered by Mr. Lushington, were shown to the Assistant Surgeon, and if it be now practicable, I think it desirable that all the bones should be examined by the Assistant Surgeon, and his evidence taken as to whether they are the bones of a male or female."

"The prosecutrix has given strong evidence as to the hair shown to her in the Talook being that of Cheruppenna. She stated thus 'on looking at the length of the said hair, and finding it to have been knotted by twisting it thrice, I concluded it to be the hair of Cheruppenna.'"

"On this subject the 1st witness, the father of Cheruppenna, was not questioned before the Court of Circuit; he stated merely 'I saw the said hair and bones in the Walooanad Talook Cutcherry, and they are the same that are before the Court;' probably because before the Criminal Court (page 46) he had deposed 'except that this hair belonged to a female, I am unable to say that it belonged to Cheruppenna.'"

"I would cause the said witness to be again examined, and he should explain in what state was the hair, when he saw it in the

21st March, 1836.

Velutedata Unni Kutan's
case.

" Talook Cutcherry; if he deposes that it was
" twisted, as stated by the prosecutrix, he should
" be asked whether Cheruppenna twisted her

" hair in a similar manner or differently.

" I have stated my opinion in the 3rd para. that there is a de-
" ficiency of evidence in respect to the information which induced
" the search for the body of Cheruppenna in the wells near the
" Vettakaramagan Pagoda. The presiding Judge observes in his
" letter. 'It is unfortunate that we are unable duly to test the
" ' statements of these witnesses (alluding to those of the 3rd and
" ' 8th) owing to the first report which was made in this case to the
" ' Talook Cutcherry by the 2nd witness, who is a Mukyastan, hav-
" ' ing been made verbally, instead of in writing, as is usually done.' "

" Of this report there is nothing in the record, further than the
" assertion of the 2nd witness, 'I immediately went and mentioned
" the circumstance in the Talook, when the prisoner was re-appre-
" hended.' I think it desirable that the Tahsildar himself should
" be examined in respect to the particulars of the information
" given by the said witness, and whether in point of fact the order
" for the search in the wells was given in consequence of his infor-
" mation, or otherwise.

" It is also I think desirable that we should have a translation of
" the deposition given by the 2nd witness, before the Tahsildar,
" though I do not consider it of much importance whether the 3rd
" witness or the 8th has told the whole truth. I think it very
" probable that the 8th witness knew more of the affair, than he
" thought it prudent to disclose before the authorities."

" So strong do I consider the evidence against the prisoner that
" I cannot concur with the Acting Judge in his acquittal, but I am
" averse to pass sentence of death without the further inquiry,
" which I have above proposed."

W. Hudleston, 3rd Judge.—" I entirely concur in issuing the or-
" ders, proposed by the 2nd Judge."

The additional evidence suggested by the 2nd Judge was accord-
ingly taken, and having been submitted to the Foujdaree Udalt, elicited the following further minutes from the Judges of that Court.

John Bird, 2nd Judge.—" The additional evidence now fur-
" nished shows that the information which induced the examina-

21st March, 1836.
Velutadata Unni Kutun's
case.

"tion of the wells was not given by the 2nd witness, but by the prosecutrix, but it appears to me certain that the information, so given by the prosecutrix, was obtained by her from the said 2nd witness. It is remarkable however that when examined by the Tahsildar on the 27th of October he deposed that Kannan did not tell him that the prisoner and others had taken away Cheruppenna and *murdered* her, and that he did not inform the prosecutrix of that circumstance; while on his further examination on the 4th of November, after Kannan had been examined and had stated that he had mentioned the fact to the 2nd witness, he deposed that Kannan had told him, 'that Unni Kutun, Chakkunni, Chakkunni's younger brother Unni Krishnan, and Koru had murdered Cheruppenna, and that he did report the circumstance to the prosecutrix.'

"The further examination of the 1st witness confirms that of the prosecutrix as to the hair found in the well, resembling that of Cheruppenna, and though there is not positive proof of the fact, it appears to me that there is strong presumptive proof that the hair found in the well is that of a woman, and no reason to doubt that the bones are also those of a female."

"Upon the whole I am of opinion that the strong presumptive proof afforded by the evidence is sufficient for the conviction of the prisoner, and that he should be sentenced to suffer death as recommended by the Presiding Judge."

"W. Hudleston, 3rd Judge.—'The prisoner's statement before the Criminal Court on the 21st ultimo contains a remarkable observation, connecting in a manner 'Cheruppenna' with the remains found in the well; he appears unable to suppose that 'bones' would have been known to be in the well, unless some persons had known that 'Cheruppenna' had 'died.'"

"I have no wish to press this remark to the disadvantage of the prisoner, who, at the conclusion of this statement, seems to have forgotten, that on the trial he voluntarily dispensed with the examination of his two witnesses."

"Unless the Court believe a black conspiracy against the prisoner, to which his brothers, and the 2nd witness, are parties, and for the existence of which I can discover no motive,—we must believe that he voluntarily confessed the crime, and that he told

21st March, 1836.
Velutedata Cuni Kutau's
case.

“ the 2nd witness, who desired him to produce Cheruppenna in order to his (prisoner's) restoration to his caste,—that it was ‘ impossible,’ that she could ever appear again : an assertion not to be explained, excepting on the supposition that he knew that she was *dead*.”

“ Believing that he has confessed the murder, and taking into consideration the various circumstances in evidence, which are corroborative of the probability that the murder was committed by him, while no fact is established to shake such probability, I cannot do otherwise than concur with the Judge of Circuit and the 2nd Judge of this Court in passing sentence of death upon the prisoner.”

W. Hudleston, 3rd Judge.—“ The Acting Judge having joined in passing the order of the 29th March, calling for further evidence in this case, I am desirous of the benefit of his opinion after further consideration.”

“ It is never so satisfactory for sentence to pass, one Judge of three dissenting from the conviction, as when the Court are unanimous.”

“ I must defer putting my hand to the draft of sentence until I have an opportunity of considering the final opinion of the Acting Judge.”

A. D. Campbell, Acting Judge.—“ The 3rd Judge having expressed a desire for my opinion before he signs the sentence, I have to state that there is nothing in the further evidence taken in this case, which has tended to shake the opinion I have already given. Though the hair and bones are those of a *female*, I see no proof whatever that they are those of *Cheruppenna*. It also appears to me not to be proved that the prisoner indicated the wells at all, and I do not consider these facts to affect him or the deceased. They give a clue, but it snaps, before terminating in proof or connecting the two together. .

“ All that remains are his confessions. The long silence of the parties, the discrepancies in their evidence, and the suspicion that some of them are implicated in the murder, renders me distrustful of their testimony, for conviction ; still more for an

21st March, 1836.
Velutedata Unni Kutan's
case

“ irrevocable sentence. It is in such extra-ordinary cases, that caution is most needful, and a mystery still hangs over this case, which continues to prevent my joining in the conviction of the prisoner. For though my impression is most unfavorable against him, I think that others may still have perpetrated the crime—and it is most dangerous to convict, where the body is not recognized.”

W. Hudleston, 3rd Judge.—“ I have with the greatest anxiety reconsidered this case, and the several opinions of the Judges of this Court upon it.”

“ I have too much respect for the Acting Judge's opinion to regard the evidence as amounting to proof positive of the guilt of the prisoner, though the presumptive proof against him is so strong, that, but for the Acting Judge's dissent, I should have felt bound to join in passing sentence of death.”

“ But where the majority of the Court, in such a case as this, are unable to get further than to conviction on strong presumptive proof, and one Judge of three cannot go so far,—where also the objection of the dissenting Judge is partly based upon the absence of any positive identification of the body of the murdered person, which defect, Mr. Lushington the 1st Judge of this Court has declared, would *always* prevent his joining in a conviction of murder, and it is therefore certain that his voice would be against a conviction in the present case,—it appears to me that under existing circumstances, there not being the Chief Judge present, whose opinion might give possibly preponderance to the view favorable to the prisoner,—it would be unsatisfactory to proceed to the capital sentence.”

“ My conclusion, therefore, is, after anxiously viewing the whole matter in all its bearings, that I ought rather to acquiesce in the objections to the conviction, than to persist in acting upon my view of the evidence; and I shall accordingly join the Acting Judge in over-ruling the futwa of the Law Officers of this Court and acquitting the prisoner.”

Orders were accordingly issued for the prisoner's unconditional release.

GOVERNMENT,

Versus

PADANAKARAN BAPU.

Charge—*Perjury*.

14th March, 1837.

*The case of Padanakaran Bapu.

The Court of Foudaree Udalut ruled in this case that a witness swearing falsely on a point material to a judicial proceeding may be convicted of perjury, although such witness may not have been cited to prove the said point; that a witness swearing falsely to the execution of a deed in his presence is guilty of perjury, as defined by the Regulations, provided the fact of such execution be material to the issue of a judicial proceeding, and also that the probability of the false statement being taken as proof of the thing deposed to, is not one of the conditions requisite to the completion of the crime of wilful perjury.

In the event of a Court of appeal considering, that a witness in his examination before the Court of original jurisdiction committed perjury, it is the duty of the superior Court to have the giver of the false deposition brought to trial for perjury.

The Court considering that the prisoner in this case had been released without trial by the Judge presiding at the Court of Quarter Sessions upon insufficient grounds, directed that he should be committed for trial at the next Sessions.

The prisoner was committed for trial before the Court of Quarter Sessions at Tellicherry, upon an indictment charging him with Perjury, in having falsely deposed on oath, when examined as a witness for the Defendants in original suit No. 71 of 1830 on the 25th April 1834 before the Provincial Court Pundit Sudr Ameen, that the Plaintiff Ruhumut Oolla did one day ten years before make over, in his (witness') presence, to his (Plaintiff's) wife Ajuma by writing, on account of her jointure, the house and other effects which were the subject of that suit: whereas in truth and in fact no such assignment was made in the presence of the prisoner: Ruhumut Oolla still holding his title to the said property, which he had not relinquished.

The prisoner was called to the bar and discharged without trial; the Presiding Judge being of opinion, that the fact stated in the indictment was not even in issue, when the prisoner's deposition was given: that the alleged Perjury was not material to the issue: and that the charge itself was irregular, "on the ground that "it was not competent to the Joint Criminal Judge to take cognizance of it, except in the "mode prescribed in Section III. Regulation "VIII. of 1829."

The Joint Criminal Judge (T. L. Strange), by whom the prisoner had been committed, dissenting from the opinion recorded by the Presiding Judge, and considering that the indictment was good, and that the prisoner had been

14th March, 1837.
The case of Pailanakaran
Bapu.

properly committed, requested that the case might be referred to the Court of Foujdaree Udalut; and submitted the following queries for the consideration of that Court with reference to the grounds assigned by the Court of Session for discharging the prisoner without trial.

I. "Does that part of the definition of perjury, which requires "that the point falsely sworn to should be material to "the issue "of some judicial proceeding," exclude cases of false swearing upon "a point, which, however material to the issue of such proceeding, "the witness was not cited to prove?"

II. "Is the evidence given by a witness to the execution of a "deed in his presence immaterial, if he be neither a witness nor "the writer thereof?"

In reply to the foregoing queries the Court of Foujdaree Udalut (present C. M. Lushington, John Bird and W. Hudleston) recorded their opinion, 1st, that "a witness swearing falsely on a point "material to the issue of a judicial proceeding may be convicted "of perjury, although such witness may not have been 'cited "to prove the said point,' and 2ndly, that 'a witness swearing "falsely to the execution of a deed in his presence is guilty of "perjury, provided the fact of such execution be material to the "issue of a judicial proceeding.'

In the course of the investigation of the suit, in which the prisoner in this case gave the evidence which led to his commitment for perjury, it was considered important to ascertain, whether the husband of the deceased Ajuma had, previously to his departure to Bombay, really drawn out a document by which he made over his property to his wife, and himself relinquished all claims to it; or whether the instrument in question was, as the Plaintiff alleged, nothing more than a declaration that he possessed such and such goods and chattels, and that during his absence he consigned them to his wife for the purpose of safe custody only. Under these circumstances the Court observed that the fact of the execution of the said document might fairly be deemed to have been in issue, and likewise to have been material to the issue of the suit referred to.

Adverting to an opinion recorded by the Presiding Judge, "that "even had the point, which the prisoner was cited to prove, been

14th March, 1837.
The case of Padanakaran
Rapu.

“ the one really in issue, it would still have
“ been very questionable whether the alleged
“ perjury could have been held to be mat-
“ rial to that issue; for, taking the whole of the prisoner’s depo-
“ sition together, as it stands in the calendar, it is by no means
“ clear that the statement it contains would be taken as proof of
“ the alleged written assignment having been actually made;” the
Court of Foujdaree Udalut remarked, that this opinion appeared to
have been founded upon an erroneous view of the intendment of
the provisions of Clause first, Section IV. Regulation VI. of 1811.

“ That Clause” the Court of Foujdaree Udalut observed “ re-
“ quires, that ‘ the false deposition’ shall be ‘ upon a point mate-
“ rial,’ &c., that is to say, shall relate to some point material, &c. ;
“ but it no where declares, that one of the conditions requisite to
“ the completion of the crime of wilful perjury shall be the pro-
“ bability of the false statement being ‘ taken as proof’ of the thing
“ deposed to.”

In respect of the third objection advanced by the Presiding Judge
to the indictment, viz. that “ it was not competent to the Joint
“ Criminal Judge to take cognizance of the offence charged, except
“ in the mode prescribed in Section III. Regulation VIII. of
“ 1829,” the prisoner having been committed for trial by the Joint
Criminal Judge upon a charge of perjury, founded upon certain
proceedings held before the Pundit Sudr Ameen of the Provincial
Court, which had come before the Joint Criminal Judge in appeal,
in his capacity of Assistant (Civil) Judge, but without having been
forwarded to him by the Pundit Sudr Ameen with a view to his
committal; and referring to the general question, thus brought
into consideration, as to the mode of proceeding, in the event of a
Court of appeal having occasion to consider that a witness on his
examination before the Court of original jurisdiction has commit-
ted perjury, the Court of Foujdaree Udalut recorded their opinion
that “ under such circumstances it is perfectly competent to, and
“ is the duty of, the superior Court ‘ to take steps to have the
“ giver of the false deposition brought to trial for perjury,’ and that
“ it is not requisite, and would be manifestly improper, for the su-
“ perior Court to apply for, or be guided by, the opinion of the
“ subordinate Court upon the sufficiency of the grounds for such
“ proceedings.”

14th March, 1837.
The case of Palanakaran
Bapu

“ It may often happen,” the Court observed,
“ that additional evidence, which Courts of ap-
“ peal are empowered by the Regulations to
“ take, for reasons recorded on their proceedings, may show that
“ a witness has committed perjury in his evidence before the lower
“ Court ; in this case the grounds for the opinion, that such perjury
“ has been committed, are before the Court of appeal, and it would
“ be quite anomalous to rule, that those grounds must be laid be-
“ fore the subordinate Court, for the latter to decide as to whether
“ or not the witness should be proceeded against for perjury.”

“ It appears to the Court of Foujdaree Udalut that the provi-
“ sions of Section III. Regulation VIII. of 1829 are inapplicable
“ to the case above described, and merely prescribe the course of
“ proceeding to be observed in the totally different case of a per-
“ son being considered by either of the tribunals mentioned in
“ Clause first to have committed perjury in his evidence given be-
“ fore such tribunal.”

The Court of Foujdaree Udalut having thus disposed of the ob-
jections raised by the Presiding Judge to the commitment of the
prisoner in this case, directed that the Joint Criminal Judge should
adopt the necessary measures for re-committing the prisoner to
take his trial before the Court of Quarter Sessions for the Perjury
charged.

GOVERNMENT.

Versus

PALIKANDI MAMAVA.

Charge—*Perjury*.

14th March, 1837.
The case of Palikandi Ma-
mava.

The Court of Foujdaree
Udalut decided in this
case that the successor
of an Officer, before
whom perjury may
have been committed,
is clearly competent to
institute a prosecution

The prisoner in this case was committed for
trial before the same Court of Quarter Sessions,
upon an indictment to the effect, that he, ap-
pearing as a civil debtor, and having moved the
Court to be relieved from confinement on a sur-
render of all his property, did, on the 2nd De-
cember 1833, depose on oath before the Assis-
tant Judge of Malabar, that he had no property

14th March, 1837.
The case of Pallikandi Ma-
mava.

thereon; that under Regulation III. of 1826 to justify a prosecution for Perjury, the contradiction must be direct and positive; in order to which a party must have given two contradictory depositions in regard to the same matter or matters of fact, but that it is not necessary that the two statements should be contradictory in "set terms."

The Court also ruled, that under Section XI Regulation II. of 1811 it "is not material to the issue of" the party's "motion to be released from confinement," that an article concealed by him should be one of value.

The Court however considering, that the prosecution of the prisoner in this case under the provisions of Regulation III. of 1826 was uncalled for, and observing, that the Joint Criminal Judge had omitted to conform to the injunctions laid down in the Circular Orders of the Foudaree Udalt under date the 31st January 1814, approved of the Judge of the Court of Quarter Sessions having discharged the prisoner without trial.

of any description whatever beyond certain sums due to him, as indicated in a list previously furnished under the provisions of Section XI., Regulation II. of 1811, and that afterwards on the 12th February 1836, he delivered another deposition on oath before the Acting Assistant Judge of Malabar, from which it appeared, that on the date first mentioned, he *was* possessed of property : to wit, of a lantern of the value of five Rupees.

The prisoner was discharged without trial, the Presiding Judge considering his commitment to be "unauthorized and irregular," on the following grounds.

"The Judge presiding having attentively considered the proceedings in this case, is of opinion, that the commitment of the prisoner was unauthorized and irregular, and that therefore it would not be proper to arraign him on the charge preferred against him."

"If the prisoner was liable to commitment on the charge exhibited in the Calendar, it is clear, that he rendered himself so liable by the second deposition which he gave on the 12th February 1836 before the Acting Assistant Judge of Malabar, and in that case it is, in the opinion of the Judge presiding, equally clear, that according to Section XXIX. Regulation IX. of 1816, that Officer alone was competent to commit the prisoner, under the provisions of Section VIII. Regulation III. of 1802."

"There is nothing in the record to show how this case came to be brought on the Criminal file. The proceedings against the prisoner in the Joint Criminal Court appear to have commenced with the Government Vakeel preferring the charge, which he was instructed to do by the power of attorney, with which he was furnished by the Joint Criminal Judge under date the 12th December 1836; but for the reason above stated, the Judge presiding is of opinion, that it was not competent to the

14th March, 1837.
The case of Palikandi Ma-
mava.

“ Joint Criminal Judge to give that power,
“ and that therefore the proceedings against
“ the prisoner in the Criminal Court have been
“ irregular ab initio.”

“ Were those proceedings, however, not open to this objection,
“ the Judge presiding has no hesitation in declaring his opinion,
“ that the charge against the prisoner is one which could not be
“ sustained ; and for this reason, that the contradictory statements,
“ said to constitute the perjury, are not such as can be pronoun-
“ ced ‘ direct and positive,’ nor without some proof that the lan-
“ tern alluded to in the second deposition was an article of value,
“ is it by any means clear, that the contradictions could be said to
“ be on a matter of fact material to the issue.”

The Joint Criminal Judge considering that the prisoner had been properly committed, requested that the objections, raised to it by the Presiding Judge, might be referred for the decision of the Court of Foujdaree Udalt; and submitted the following queries, upon the points adverted to by the Presiding Judge, for the consideration of the Higher Court.

I. “ Is the identical Officer, before whom perjury may have been
“ committed, alone the person having authority to institute a pro-
“ secution thereon, or, may a successor to such Officer perform
“ this act?—Vide Section XXIX. Regulation IX of 1816, Section
“ VIII. Regulation III. of 1802, Section VIII. Regulation II. of
“ 1822 and Clause first, Section III. Regulation VIII. of 1829.”

II. “ Is it necessary, in order to frame a charge under Regula-
“ tion III. of 1826, that the different statements made on oath by
“ an individual should be contradictory, the one of the other, in set
“ terms, or is it sufficient, that the effect of the two statements,
“ when compared together, should be such as to prove that one of
“ the two depositions must necessarily be false.”

III. “ When a pauper makes an oath to his property under
“ Section XI. Regulation II. of 1811, and is subsequently found to
“ have concealed possession of one of his effects, is it necessary to
“ make such concealment material to the issue of his motion to
“ be released from confinement, that the article concealed should
“ be one of value, and, if so, of what value?”

In reply to these queries the Court of Foujdaree Udalt (pre-
sent J. Bird and W. Hudleston) recorded their opinion, First that

14th March, 1837.
The case of Palikandi Ma-
mava.

“ the successor of the officer, before whom
“ perjury may have been committed, is clear-
“ ly competent ‘ to institute a prosecution
“ thereon.’ ”

• Secondly, that “ under Regulation III. of 1826 the contradic-
“ tion must be ‘ direct and positive,’ in order to which the party
“ must have given ‘ two contradictory depositions in regard to the
“ same matter or matters of fact ;’ but it is not requisite that the
“ two statements should be contradictory ‘ in set terms.’ ”

• Thirdly, that “ under Section XI. Regulation II. of 1811 ‘ it ‘ is
“ not material to the issue of’ the party’s ‘ motion to be released
“ from confinement,’ that an article concealed by him should be
“ one of value.”

In regard to the particular case under notice, the Court of Foujdaree Udaltut concurred with the Presiding Judge in considering, that it was not a case for prosecution under Regulation III. of 1826, and they observed, that in making the commitment the Joint Criminal Judge had not attended to the injunctions contained in the Circular Order of the Foujdaree Udaltut under date the 31st January 1814.

NARAYANAN,

Versus

ARUNACHALAM.

Charge—*Murder.*

6th May, 1837.
Arunachalam’s case.

This trial came on before the Court of Circuit at the 1st Session held at Trichinopoly for the year 1837 ; the prisoner being charged with having murdered the prosecutor’s brother Ramasami by stabbing him with a spear head.

It was decided in this case that under the provisions of Sections XV. and XVII Regulation VIII. of 1802 the consideration of “ alleviating circumstances ” in cases of “ express murder ” is admissible to justify a mitigation of the capi-

The prisoner admitted the crime throughout, but declared that he had been impelled to its commission in consequence of the deceased having been engaged in an adulterous intercourse with his wife, and alleged before the Court of Circuit, that he had discovered the deceased and his wife on two occasions in the act

6th May, 1837.
Arunachalam's case.

tal sentence awardable for the crime of murder, and under this construction of the Law, the prisoner who was convicted of wilful murder, was sentenced to transportation for life; the capital sentence being remitted on the ground that the prisoner had reason for believing in the existence of a criminal intrigue between his wife and the person of whose murder he was convicted, and whom he had found walking in company with his wife, when he inflicted on him the wound which caused his death.

The Court of Foujdaree Udalut noticed the omission of the Court of Circuit to read at the trial the declarations made by the prisoner before the Police and Criminal Court, and observing that this omission had compelled the Court of Foujdaree Udalut to throw those statements out of consideration, remarked that whether or not a prisoner plead guilty, it is of the highest importance that his previous declarations should be read and proved at the trial.

of adultery, and had warned them against a continuance of their intrigue, and that on the day on which the murder was committed, finding them walking together in a corn field in a familiar manner, in a fit of passion he stabbed the deceased.

The prisoner cited two witnesses to prove the fact of the alleged adulterous intercourse having been carried on between the deceased and his wife in their house and with their connivance, but they both denied any knowledge of the fact, nor was there any evidence in support of the prisoner's allegation, that he had discovered his wife and the deceased in the act of adultery.

The Judge of Circuit (W. Harington,) however, in referring the trial, expressed his conviction, from the prisoner's earnest manner, of the truth of his plea, or at the least of sufficient having occurred to justify his entire belief of it, and recommended, that under the circumstances of the case the extreme penalty of the Law should be remitted and the prisoner sentenced to transportation for life.

The Court of Foujdaree Udalut (present J. Bird and W. Hudleston) concurred in convicting the prisoner of the murder charged, and adopting the recommendation of the Judge of Circuit, passed upon the prisoner a sentence of transportation for life.

The 2nd and 3rd Judges of the Court of Foujdaree Udalut, to whom the trial was referred for final judgment, were at first disposed to consider the grounds urged by the Presiding Judge insufficient to justify the mitigation of punishment proposed, but decided on re-consideration, that with reference to the provisions of Sections XV. and XVII. Regulation VIII. of 1802, in which the consideration of alleviating circumstances in cases of express murder is pointedly referred to, and to certain precedents contained in the Criminal Reports of the Court of Nizamut Udalut in Ben-

6th May, 1837.
Arunachalam's case.

gal, they would be justified in extending mercy to the prisoner, as recommended by the Presiding Judge.

The following minute recorded by the 3rd Puisne Judge W. Hudleston is annexed, as setting forth the grounds upon which the decision of the Court was based.

"The ground, upon which I have proposed to pass sentence of capital punishment in this case, in opposition to the recommendation of the Judge of Circuit in favor of the prisoner, is the rule of English law, which does not admit any provocation whatever to extenuate deliberate murder in cold blood."

"The 2nd Judge, however, is of opinion that adultery with the prisoner's wife would constitute such provocation as might, if proved, have justified the extension of mercy to the prisoner. The Judge of Circuit states his 'full conviction,' that the prisoner believed the fact of the adultery, asserted on his defence: if so, it is plain, that the extenuation exists, though the fact has not been established by evidence. It may be, as supposed by the Judge of Circuit, that the prisoner's witnesses have kept back evidence, which they could have given in support of his assertion, and this is a matter deserving of consideration, if the doctrine of the admissibility of a plea of this nature, in such a case, can be defended."

"It is observable, that in Sections XV. and XVII. Regulation VIII. of 1802 the consideration of 'alleviating circumstances' in cases of 'express murder' is pointedly referred to: from which it may be inferred that the legislature did not intend to maintain the strict rule of English law in this respect,—for by the term 'express murder' must, I apprehend, be understood wilful, deliberate murder, not attributable to any sudden provocation immediately acted upon."

"If any latitude be allowable, this inconvenience is liable to follow, that Judges have no certain guide, and are left to their own feelings of what may, or may not, be alleviating circumstances: still this is not sufficient to warrant the setting up a strict and positive rule, when the Legislature has left this matter discretionary with the Court.

"I am, therefore, after much anxious consideration of this case,

6th May, 1837.
Arunachalam's case.

"disposed to concede the admissibility of a
 "plea which by the law of England could not
 "be admitted."

"In Bengal I perceive, that a very large discretion is used by
 "the Nizamut Udalut, of which there is a remarkable instance
 "in the case, at page 472, Vol. II. of McNaghten's Reports,—in
 "which the Court mitigated the capital punishment on a presump-
 "tion that the prisoner 'in a fit of drunken passion or jealousy'
 "killed his wife, although the prisoner's plea in extenuation was
 "totally disbelieved by that Court; and the 5th Judge Mr. Ross
 "concurred in the mitigated sentence merely on the ground, that
 "'in cases of murder of equal atrocity with this, imprisonment for
 "'life has been deemed by the Court a punishment sufficiently se-
 "'vere to satisfy justice.'"

"Proceeding then upon the assumption, that a latitude is per-
 "missible in respect to 'alleviating circumstances' in cases of
 "murder, which in England is not allowed, it appears that in this
 "case the jealousy of the prisoner having been previously excited
 "by some circumstance or other, his wife on the day of the mur-
 "der had been working in company with the deceased, and was
 "walking immediately next to him when the fatal stab was given."

"Now, in the supposition, adopted by the Judge of Circuit,
 "that the prisoner had reason to *believe* that adultery had been
 "committed, there was, here, an immediate cause of exasperation,
 "arising from the two parties having passed great part of the day
 "in each other's company, the prisoner being absent, and from
 "his seeing his wife walking close behind the deceased. Possi-
 "bly, had she not been so placed, the deed might not have been
 "done: at all events the sight was calculated to infuriate a man,
 "who was impressed with a belief, that he had been so wronged."

"There is something in the manner, in which the prisoner's
 "wife in her police deposition denied any 'connexion with the
 "deceased,'—that conveys to my mind an impression, corrobora-
 "tive of the prisoner's grounds of suspicion: it does not appear,
 "that malice, or any other ground, subsisted; and the prisoner's
 "resolving in open day to proceed to this extremity can only be
 "accounted for by supposing, that he was actuated by a feeling of
 "deep, intolerable, injury. His passion, apparently, did not al-
 "low him to wait an opportunity of secret vengeance."

6th May, 1837.
Arunachalam's case.

" I have given the more consideration to these
" circumstances, in re-perusing the record *with*
" *the impression* that such circumstances may
" form legitimate ground for mitigating the capital punishment.
" In bringing my mind to admit this, I have submitted to the
" judgment of other Judges, and to precedents which I might not
" have concurred in establishing."

" The object of capital punishment being to prevent crime by the
" operation of the example ; it may further be urged, that cases of
" murder from jealousy are not frequently brought before this
" Court, and it is to be hoped, that if a sentence of transportation
" for life shall be passed in this case, such lenity will not have the
" effect of increasing their frequency."

No. 5, Malabar Calendar, 2nd Session 1830.
" The last case of murder, in which the plea
" of adultery was advanced (so far as I recollect)
" is that noted in the margin, in which the sen-
" tence of this Court was not capital."

" After the most careful deliberation I have arrived at the con-
" clusion, that a sentence of transportation for life may be passed
" on the prisoner, and I therefore propose to adopt the recommen-
" dation of Mr. Harington."

In communicating their sentence the Court of Foujdaree Udalut observed, that " the declaration of the prisoner before the Police
" Officer was neither read nor proved at the trial, and that the pre-
" siding Judge had likewise omitted to cause the prisoner's decla-
" ration before the Criminal Court to be read at the trial, although
" he examined the attesting witnesses to it."

The Court remarked, that " both these declarations should have
" been put in and read and proved at the trial in the prescribed
" manner, and that in consequence of this omission on the part of
" the Presiding Judge the Foujdaree Udalut had been constrained
" to throw this important evidence out of consideration"—and they
" directed, that the Presiding Judge should bear in mind, that " whe-
" ther or not a prisoner plead ' guilty ' it is of the highest impor-
" tance that his previous declaration or declarations, if confessional,
" as in this instance, should be duly read and proved at the trial be-
" fore the Court of Circuit."

GOVERNMENT,

Versus

1. GANDLA GANGADU,
2. JANGAM RAZUGADU,
3. CHINNA BALIGADU.

Charge—Murder and Robbery.

14th June, 1837.

The case of Gandla Gangadu and others.

The prisoners were proved to have killed a proclaimed robber and appropriated to themselves certain property found on his person were convicted of culpable homicide and theft and were sentenced respectively to five years' imprisonment with hard labor in irons.

The prisoners were charged at the 2nd Session of the Court of Circuit for 1836 held at Bellary with having at about 10 A. M. on the 3rd May 1836, on a hill near the village of Bukapatnam in the Talook of Pennaconda, cut down and murdered one Passul Razugadu, the leader of a notorious gang of robbers, for whose apprehension and conviction a reward had been offered by the Magistrate of Bellary, and with having robbed from his person gold and silver ornaments, pearls, &c. of a considerable value.

It appears from the proceedings in this case, that a proclamation having been issued by the Magistrate for the apprehension of Passul Razugadu the leader of a desperate gang of robbers, by whom numerous torch-light gang robberies, attended with aggravating circumstances, had been committed in the District of Bellary, the 2nd and 3rd prisoners in this case formed the design of capturing the said Passul Razugadu, and receiving the reward which had been proclaimed; that with this view they induced a friend of Passul Razugadu to introduce them to him under the pretence of wishing to become members of his gang, and having established themselves on terms of intimacy with him, persuaded the 1st prisoner to accompany them, and assist them in effecting his apprehension, promising that he should share with them the Government reward; that they thereon concerted their plans, and on the day specified in the indictment proceeded to a hill on which the robber was concealed, and seizing an opportunity when he was without his arms, attacked and killed him with a hatchet and with his own sword which was lying near, and took from his person several valuable jewels, which he wore at the time, which the 2nd and

14th June, 1837.
The case of Ganda Gan-
 gadu and others.

3rd prisoners gave in charge of the 1st prisoner to secrete for them, while they proceeded to report to the authorities that they had killed the robber in endeavouring to effect his capture, and to claim the Government reward.

It seems that the 2nd and 3rd prisoners subsequently quarrelled with the 1st prisoner about the jewels which they had taken from the body of the deceased, and that in the course of their altercation, the 2nd prisoner having snatched from the 1st prisoner the bundle which contained them, and carried it off, the latter proceeded to the Police and disclosed the circumstances under which the robber had been killed, and of the robbery from his person of which he and the two other prisoners had been guilty.

The proof of the robbery rested on the confession of the 1st prisoner, and on the evidence of two persons who were present when the quarrel took place between the 1st and the 2nd and 3rd prisoners, and who deposed to having seen the 2nd prisoner snatch from the 1st a small bundle which was the subject of their altercation, and described the expressions made use of by the prisoners on that occasion, as having reference to the possession of certain jewels which had been taken by them from Passul Razugadu when he was killed.

The 1st prisoner before the Criminal Court denied his Police confession, which however was proved to have been made by him voluntarily.

The 2nd and 3rd prisoners admitted that they had killed the deceased in company with Mudugadu, the 3rd prisoner's younger brother, but endeavoured to justify the act on the ground that they were compelled to it in self defence, in consequence of the resistance offered by the deceased on their attempting to take him alive. They declared that the 1st prisoner was not present on the occasion, denied having taken any thing from the person of the deceased, and stated that they had previously effected the apprehension of several members of his gang.

A rumal, scrip, and certain other articles of a trifling value were given up by the 1st prisoner to the Police, having been buried by him behind his house, and were sworn to by the 1st and 5th witnesses as having been seen by them in the possession of the deceased seven days previous to his death, when they had accompanied the 2nd and 3rd prisoners to a hill, in which the deccas-

14th June, 1837.
The case of Gandla Gangadu and others.

ed was living, for the purpose of apprehending him, but were obliged to defer the execution of their purpose in consequence of several of his followers being with him; and the 5th witness stated, that on that occasion he observed on the person of the deceased jewels corresponding in appearance to those described by the 1st prisoner in his Police confession, as having been taken from the person of the deceased when he was killed.

The 3rd prisoner's brother Mudugadu was committed to the Criminal Court as 4th prisoner in the case, but was acquitted and released by that tribunal; there being no proof that he had taken any part in the murder or robbery charged.

The Mahomedan Law Officer of the Court of Circuit acquitted the 1st, 2nd and 3rd prisoners of the robbery charged against them, but convicted them of having killed the deceased, declaring them liable to Ookoobut; Hud being barred on account of the 1st prisoner's denial of his Police confession, and the peculiar circumstances under which the act was committed.

The Circuit Judge (J. Haig) convicted the prisoners both of robbery and murder, stating his opinion that there could be no doubt from the evidence for the prosecution, that the object of the prisoners in killing the deceased was the acquisition of the valuable property specified in the 1st prisoner's confession, which they could not otherwise have secured.

In proposing the sentence to be awarded, the Presiding Judge observed, that "the destruction of this robber and the consequent disunion, want of mutual confidence, and probable dispersion of the banditti whom he commanded, occasioned by the treachery of the 2nd and 3rd prisoners, were most fortunate events for the poor inhabitants of the district, who had so long been suffering from their depredations," and had produced "a very considerable diminution in the number of gang-robberies in the Bellary District," and that "the meritorious service performed by the prisoners in the previous apprehension of several of the robbers belonging to Passul Razugadu's gang, who were convicted and sentenced to fourteen years' hard labor, should be duly considered in their favor in determining the degree of punishment to be adjudged." He accordingly recommended that the prisoners should be sentenced severally to imprisonment with hard labor in irons for the period of five years.

14th June, 1837.
The case of Gaudia Ganga
and others.

By the Court of Foujdaree Udalut—John
Bird, 2nd Judge.

"The charge in this case is for having killed a proclaimed robber, and for having appropriated certain articles of property which were found upon him."

"The Law Officer of the Court of Circuit acquitted the prisoners of the latter charge, but convicted them of killing the deceased; justifying the act to a certain extent, but declaring them liable to discretionary punishment."

"The Presiding Judge was of opinion, that there could not be any doubt from the evidence for the prosecution of their object in killing him having been the acquisition of the valuable property specified in the 1st prisoner's Police confession, which they could not otherwise have secured; and he recommends that they be sentenced to be imprisoned with hard labor in irons for the period of five years."

"After a most anxious consideration of this extraordinary case, I think the confessions of the 1st prisoner made before the Police Officer could not possibly be the work of invention. They are too particular, and the circumstances related too probable, to leave room for any doubt, and further it is not probable that the 1st, 2nd, 3rd and 4th witnesses could have been prevailed upon to support the conspiracy. I am of opinion therefore that the evidence is sufficient to convict the 1st prisoner of having been engaged in killing the deceased, and I think it proved that the three prisoners appropriated to themselves the property he had about him, but that the evidence is not sufficient to show precisely of what it consisted, nor what was its value."

"I do not however agree with the Presiding Judge in his opinion that the object of the prisoners in killing the deceased was the acquisition of the property. There is nothing whatever to support such an opinion, and it seems to me that there can be no doubt that they killed him, fearing to attempt taking him alive, and that they could not resist the temptation of appropriating the spoil found upon him."

"We have nothing to show the manner in which the prisoners killed the deceased excepting their own confessions, and it appears to me a difficult question to determine whether the act of the prisoners in killing the 'Proclaimed Robber' is justifiable or not."

14th June, 1837.
The case of Gandia Gan-
gadu and others.

"The record, I think, leaves no doubt that he was 'a Proclaimed Robber,' and there can be no doubt also that he was well armed, that he was a strong man, and that any attempt to take him would have been most dangerous."

"I find in the 4th Volume of Blackstone, Page 292—'any private person that is present when any felony is committed, is bound by the law, to arrest the felon; on pain of fine and imprisonment, if he escapes through the negligence of the standers by. And they may justify breaking open doors upon following such felon: and if they kill him, provided he cannot be otherwise taken, it is justifiable.' The same rule would, I conclude, stand good in respect to a 'Proclaimed Robber.'"

"I find also in Archbold, Page 328, 'where an Officer or private person, having legal authority to apprehend a man, attempts to do so, and the man, instead of resisting, flies, or resists and then flies and is killed by the Officer or private person in the pursuit: if the offence with which the man was charged were a treason or felony, or a dangerous wound given, and he could not otherwise be apprehended, the homicide is justifiable.'"

"Now although there is too much reason to believe that the prisoners, or at least one of them, commenced by wounding the deceased without any attempt to secure him, yet the 2nd and 3rd prisoners urge, in their confessions before the Criminal Court, self preservation, and I think, that as we have nothing but the accused statements of the case, we are bound to take the most favorable possible view of the transaction. Accordingly I am of opinion that the prisoners are not guilty of murder and that if the killing were not altogether justifiable, the act amounts to no more than homicide."

"Upon the whole it appears to me, that under the finding of the Law Officers, the prisoners should be sentenced to temporary imprisonment, and if my colleagues should agree, we can determine the extent."

A. D. Campbell, Acting 3rd Judge.—"I concur in the view taken of this case by the 2nd Puisne Judge, and in convicting all the three prisoners of *culpable* homicide, and secretly appropriating to themselves the property of the deceased, which ought to have been surrendered to Government."

14th June, 1837.
The case of Gandia Gan-
gadu and others.

“ There is no doubt that, according to the
“ English law, as well as the dictates of com-
“ mon sense, any one, especially a public Of-
“ ficer, who attempts to arrest a notorious offender accused of a
“ heinous offence, *if resisted*, and in the endeavour to take him,
“ kills him, will be deemed guilty only of *justifiable* homicide on
“ the ancient principle that ‘ *furem si aliter capi non posset*, ‘occi-
“ dere permittunt,’ quoted by Blackstone, and that in this case he
“ is liable to no punishment.”

“ But this goes on the presumption that the attack on the offen-
“ der is *necessary*; and that no other means can be resorted to, to
“ prevent his escape from the arrest of justice. Now such was not
“ the fact in this case. The apprehenders were four to two, all
“ more or less armed—and the deceased not armed, though
“ sitting near his weapons. The original attack was dictated, I
“ think, more by cowardice, than necessity, and the subsequent but-
“ chery was wanton and cruel, neither *necessary* for self-preserva-
“ tion, nor for the apprehension of the deceased.”

“ I think that in this case there has been an unnecessary sacrifice
“ of human life, and that we are bound to mark our sense of this
“ by a sentence of punishment, which, I think, ought not to be less
“ than two years’ imprisonment, the sentence passed in Bengal
“ on a far less serious case—that of Auzcem Khan and others in
“ 1826, Vol. 2, Page 461.”

“ For the further offence of appropriating secretly to themselves
“ his property, equivalent to an aggravated case of theft, I would
“ increase the punishment, and sentence them to four years’ im-
“ prisonment with hard labor in irons.”

The 2nd Puisne Judge having suggested in reply to the Acting
Judge’s minute, that with reference to the recommendation of the
Judge presiding at the trial, a sentence of five years’ imprisonment
should be awarded, and the Acting Judge having agreed to this
suggestion, sentence was passed accordingly.

GOVERNMENT,

Versus

1. BIRANNA,
2. MUTTANNA GANDA,
3. SUBBA, Peon,
4. GUNHA,
5. KRISHNA,
6. DEVAPPA,
7. KARYANA SUBBA.

Charge—Treason and Rebellion.

16th June, 1837.
The case of Biranna and
others.

Adverting to a practice observed in the proceedings of the Special Commission, appointed for the trial of persons concerned in the Rebellion in Canara in 1837, of receiving detailed statements from the accused immediately after arraignment, the Court of Foujdaree Udalut observed, that whatever the prisoners might have to urge in their defence, should be received at the close of the evidence for the prosecution, and that in this, as in all other points, the forms of proceeding observed by the ordinary tribunals of Criminal Judicature should be strictly adhered to by the Courts convened under the provisions of Regulation, XX. of 1802.

The prisoners were tried before a Special Court holden at Mangalore on the 10th May 1837 upon an indictment charging them with Treason and Rebellion, "in that they, being subjects of the British Government, did on the 30th March 1837 withdraw their allegiance therefrom, and oppose the authority thereof, and in company with others, armed with muskets, matchlocks, knives, and other weapons did attack the Talook Cutcherry at Bella. rypett in the province of Canara, seize and make prisoners of the Head Serishtadar Devappa, the Tahsildar Govindaya, and other public servants, take possession of public cash amounting to Rupees 13,000 and upwards, and aid and abet in declaring and attempting the subversion of the Government of the Honorable East India Company."

Additional counts were preferred against the 1st and 2nd prisoners, charging them respectively, the 1st with having on the 17th April 1837 appeared at Madoor as a chief of rebels

in open resistance to the Government, and the 2nd with having on the 2nd April 1837, as a chief of a large body of armed rebels, taken possession of the public buildings and public property at Casargodi, and made prisoners of the Government servants at that place.

16th June, 1837.
The case of Biranna and
others.

All the prisoners were fully convicted of the offences laid to their charge, and the trial was referred by the Special Commissioners (J. Vaughan and T. L. Strange,) with a recommendation that the 1st and 2nd prisoners, who were proved to have taken a very prominent part in the rebellion, and the 3rd prisoner, a Government Peon, should be severally sentenced to suffer death, and a sentence of five years' imprisonment with hard labor in irons should be passed upon each of the remaining prisoners, who appeared to have committed the offences charged against them in blind obedience to the orders of their Potails.

The Court of Foujdaree Udalut (present J. Bird and A. D. Campbell) concurred with the Special Commissioners in the conviction of all the prisoners charged and sentenced the 1st and 2nd prisoners to be hanged, the 3rd prisoner to be transported for life, and the 4th, 5th, 6th, and 7th prisoners respectively to five years' imprisonment with hard labor in irons, as recommended by the Special Commissioners.

Adverting to a practice observed in the proceedings of the Special Commissioners in this and other trials, which had come before the Court of Foujdaree Udalut, of receiving detailed statements from the prisoners immediately after arraignment, the Court of Foujdaree Udalut, in communicating their sentence, recorded the following remarks.

"The Court of Foujdaree Udalut considering the practice continued by the Special Commission of receiving detailed statements from the accused immediately after the arraignment, to be objectionable, as well as irregular, resolve to direct that it be discontinued.

"Whatever the prisoners may have to urge in their defence, &c., should be received at the close of the evidence for the prosecution: and in this, as in all other points, the forms of proceeding observed by the ordinary tribunals of Criminal Jurisdiction should be strictly adhered to by the Courts convened under the provisions of Regulation XX. of 1802."

GOVERNMENT,

Versus

BAVA SAHIB.

Charge—*Perjury*.

18th July, 1837.

Bava Sahib's case.

In this case in which the prisoner was tried for Perjury the arraignment was pronounced by the Foujdaree Udalut to be defective, inasmuch as it contained no averment that the alleged perjury was material to the issue of the judicial inquiry in the course of which it was alleged to have been committed, and the Court of Foujdaree Udalut quashed the trial, and ordered that the prisoner should be again placed upon his trial upon a revised arraignment.

The prisoner in this case was tried at Chingleput at the 1st Session of the Court of Circuit for 1837 upon an indictment laid in the following terms.

"You are charged with having appeared as a claimant to receive a certain sum of money from the Additional Government Commissioner on account of arrears of pay due to the late Mahomed Raja, and being called upon to depose to certain matters of fact regarding the same, on the 30th March 1835 or 19th Pangu of the year Jaya, after having been duly sworn, deposed on oath in words to the following effect; 'Mahomed Raja has three daughters, one named Mashabi, another Khatijabi, and the other Noor Bee. Mashabi is now in the bandy: her husband died, whose name I do not recollect: the said Khatijabi also is in the bandy.' Whereas, in truth and in fact, the said Khatijabi was not in the bandy, but was at Bangalore at that very time. In consequence of which false swearing you received the amount of arrears of salary due to the father of the said Khatijabi, and you well knew at the time of the said swearing that the deposition so given was false."

The Law Officer of the Court of Circuit acquitted the prisoner on the ground that the evidence was insufficient to prove the alleged perjury; but the Circuit Judge (W. Davis,) dissenting from this *Futwa*, and considering the crime charged to be fully established, referred the trial to the Foujdaree Udalut with a recommendation that the prisoner should be sentenced to two years' imprisonment with hard labor in irons.

On perusing the record the Court of Foujdaree Udalut (present C. M. Lushington, J. Bird and A. D. Campbell) remarked that the

18th July, 1837.

Bava Sahib's case.

arraignment, upon which the prisoner had been tried, was essentially defective; inasmuch as it contained no averment that the point, respecting which the alleged false deposition was given, was material to the issue of the inquiry then pending before the Additional Government Commissioner.

The Court observed that "the omission in the first instance of the Criminal Judge, and the neglect of the Circuit Judge to rectify it are the more reprehensible, seeing that the definition of the crime of Perjury in Section IV. Regulation VI. of 1811 is so precise, and that the Circular Order of the Court of Fousdaree Udalut of the 31st January 1814 distinctly declares, that "failure of proof of any one of the points specified in the definition of Perjury contained in Section IV. Regulation VI. of 1811 must be fatal to the prosecution, because the crime is defined to consist not in one or more of these particulars, but in all and every one taken together."

And being of opinion that the omission above adverted to necessarily and absolutely vitiated the whole proceedings, the Court resolved to quash the trial, and directed the Judge of Circuit, before whom it had been held, to instruct the Criminal Judge of Chingleput to take the necessary steps for bringing the prisoner Bava Sahib to trial before the Court of Circuit upon a revised arraignment, when it would be his duty to endeavour to produce evidence to prove, not only "the falsehood of the words on which the perjury was charged," but also that they were uttered on a point material to the issue of the judicial proceeding pending, (which should likewise be described), whatever it might be.

GOVERNMENT,

Versus

RAMASAMI MUDALI.

Charge—Perjury and Subornation of Perjury.

26th January, 1837.

Ramasami Mudali's case.

Prisoner acquitted of
Subornation of Perju-

The prisoner was tried at Cuddalore at the 2nd Session of the Court of Circuit for 1837 upon an indictment consisting of two counts; the former of which charged him with Subor-

26th January, 1837.
Ramasami Mudali's case.

ry and Perjury on the ground that the authority before whom the alleged perjury was committed had no legal judicial jurisdiction in the matter in which the supposed false depositions were delivered.

nation of Perjury, in having suborned to certain persons to give false evidence before the Joint Magistrate of South Arcot, to the effect that they had witnessed the delivery of a bribe to one of the members of a Punchayet, convened for the decision of certain matters, in which he the prisoner was interested.

In the second count the prisoner was indicted for Perjury, in having falsely deposed upon oath before the Joint Magistrate of South Arcot, that the persons above-mentioned had informed him of their having witnessed the delivery of the bribe referred to; that the examination of the witnesses before the said Punchayet took place on the date of the Sub-Collector leaving the village in which it was held; and that the prisoner was present at the examination of the two witnesses only; the said statements being false and being material to the issue of the inquiry in question.

The Judge on Circuit (T. A. Oakes,) considered the prisoner convicted upon both counts of the indictment, and recommended that he should be sentenced to exposure by Tasheer, to receive one hundred and fifty lashes, and to be imprisoned with hard labor in irons for seven years under the provisions of Clause first, Section III. Regulation VI. of 1811.

The Court of Foujdaree Udalut (present J. Bird and A. D. Campbell) acquitted the prisoner observing that "in order to render a person liable to the penalties provided for perjury and subornation of perjury, there must be some judicial proceeding, Civil or Criminal, and the Perjury must be upon a point material to the issue of such judicial proceeding."

"In the present instance," the Court of Foujdaree Udalut remarked, "the complaint against Ramasami Mudali by Pairi Ammal was on the subject of a division of family property, in which it appeared to the Court of Foujdaree Udalut, that the Sub-Collector had no legal judicial jurisdiction; and such being the case, neither the statement of the said Ramasami Mudali (which the Court observed ought not under the circumstances of the case to have been on oath), nor the evidence of the witnesses brought forward by that individual, could possibly be material to the

26th January, 1837.
Ramasami Mudali's case.

“ issue of any judicial proceeding by reason of
 “ the illegality of the Punchayet.

MARAL,

Versus

KUPPAN AND MUTTAN.

Charge—*Murder.*

27th January, 1838.
The case of Kuppen and another

The reception of the evidence of a child of ten years of age, not upon oath, condemned by the Court of Foudaree Udalut, and the Circuit Judge referred to the rules laid down in Circular Orders of the 15th April 1819, and 12th July 1825, regarding the admission of the evidence of persons of a tender age.

The prisoners were charged before the Court of Circuit at the 2nd Session of 1837, holden at Salem for the general Jail delivery of that Zillah, with having, about the beginning of October 1837, the precise date not being known, bound and beaten one Gora Rangan at Allinaikanpalayam in the Shaunkarghiri Talook in the Zillah of Salem, for the purpose of making him point out certain property, which he was charged with having stolen, from the effects of which beating the said Gora Rangan died in the Hospital of the Zillah Jail on the 16th of the said month of October 1837.

The facts of the case as established by the evidence are briefly these. The deceased, rather an old and a very infirm man, entered the house of one Nalla Kaundan, an inhabitant of the village above mentioned to ask an alms, he being a beggar by profession. The owner of the house suspecting that his design was to carry off a certain brass plate, though he admitted that nothing was actually stolen, seized him and delivered him to the two prisoners who were Talliars of the Village in question, who immediately proceeded to beat and otherwise ill-treat him, to induce him to confess to some thefts, which had been elsewhere committed, and of which the perpetrators had not been discovered; and the ill-treatment he underwent, occasioned his death a few days afterwards.

The Judge on Circuit (H. Dickinson) considering it clearly established, that the death of the deceased Rangan was caused by the ill-treatment to which he was subjected by the prisoners, convicted the prisoners of murder, and recommended that they should be sentenced to transportation for life.

27th January, 1838.
The case of Kuppan and
another.

The Court of Foujdaree Udalut (present J. Bird and A. D. Campbell), to whom the trial was referred for their final judgment, being of opinion, that there was no intention on the part of the prisoners to kill the deceased, and seeing grounds for believing that in the case of a younger and more robust man the ill-treatment which was inflicted, would not have terminated fatally, convicted the prisoners of culpable homicide, and sentenced them respectively to ten years' imprisonment with hard labor in irons.

It appeared from the proceedings that no mention was made by the Head of Police of the Shankarghiri Talook in the report, which accompanied the deceased Rangan to the Criminal Court, of the state in which he was, when delivered into his custody, and that no arzee was addressed by that Officer to the Court.

It also appeared that the Village Moonsiff had permitted the deceased Rangan to be kept by the prisoners in custody for six days, previous to his transmission to the Head of Police.

With reference to these irregularities the Court of Foujdaree Udalut directed that an explanation should be required from the Head of Police in regard to his proceedings in the matter, and that serious notice should be taken of the conduct of the Village Moonsiff, in permitting the detention of the deceased in the manner above noticed.

Adverting to a note appended to the deposition given by one of the witnesses for the prosecution, a child of ten years of age, before the Assistant Criminal Judge, to the effect that it had been taken, "without an oath being administered to the deponent;" the Court of Foujdaree Udalut directed that the attention of the Assistant Criminal Judge of Salem should be called to their Circular Orders of the 15th April 1819, and 12th July 1825, the former of which distinctly declares that "an infant is in no case to be admitted as evidence without oath," while the latter indicates the mode, in which the evidence of persons of tender age is to be received.

The Government in their order of the 9th May 1836, No. 402, having directed that all remarkable instances of oppression and cruelty on the part of the Village Police Officers should be brought to the notice of Government,—a report of this case was transmit-

27th January, 1838.
The case of Kuppen and
another.

ted for the information of the Right Honorable the Governor in Council.

NOTE.—The Circular Orders above referred to are to the following effect.

C. O. 15th April, 1819.

In the trials lately referred to the Court of Foujdaree Udalut, instances have occurred of the examination of persons under age, as witnesses before the Courts of Circuit, who have not been put upon oath: some cases have, also, been brought before the Court, in which the evidence of infants, as well as of other persons, against the admission of whose testimony exception may have been taken by the Mahomedan Law Officer, assisting at the trial, has been rejected altogether.

With respect to both of the cases last mentioned, it is to be presumed, that the rejection by the Courts of Circuit of the evidence of such persons has arisen from a consideration of the light in which their testimony is viewed by the Mahomedan Law; the Court of Foujdaree Udalut deem it proper, therefore, to direct the attention of the Judges of those Courts to the provisions of Section II. Regulation I. of 1818, under the operation of which enactment it is competent to the Court of Foujdaree Udalut to convict and sentence to punishment in cases of acquittal under the Mahomedan Law.

With reference to the powers vested in the Foujdaree Udalut by the legislative enactment above cited, it is obvious that no evidence, which is admissible under the Law of England, is to be rejected in criminal cases.

Want of discretion is held to be a good exception against a witness, and an infant is in no case to be admitted as evidence without oath; but immaturity of age is not of itself to be considered to derogate from the competency of a witness.

The Court of Foujdaree Udalut direct, therefore, that whenever a person of tender age may be brought before the Court of Circuit as a witness, the Judge presiding at the trial do satisfy himself, by personal examination, whether or not the party be sensible of the nature and obligation of an oath, and of the consequences of perjury, by the result of which examination he will be guided in the admission or rejection of the evidence of the witness.

C. O. 12th July 1825.—B.

The Judges of the Foujdaree Udalut, having lately had before them some cases, wherein the Criminal Judges have received the evidence of persons of tender age without oath, they resolve to issue the following instructions, with reference to their orders to the Provincial Courts of Circuit of the 15th April, 1819.

Whenever the evidence of a person of tender age shall appear to a Criminal Judge to be material, it will be his duty, prior to recording such evidence, to ascertain by personal examination, whether the child has any notion of the obligation of an oath; should it appear from such examination, that the child is not sensible of the nature of an oath, but that this ignorance is attributable

NANJAPPAN,

Versus

SULABAKAL.

Charge—*Murder.*

8th March, 1838.
Sulabakal's case.

The pressure of want held by the majority of the Court of Foujdaree Udaltut to be no palliation of the crime of child-murder.

The prisoner was tried at Coimbatore at the 2nd Session of the Court of Circuit for 1837 upon an indictment charging her with having murdered one Rangammal, the daughter of the prosecutor, a child of five years of age, by pushing her into a well in which she was drowned, she having previously plundered her person of jewels of the value of 3 Rupees.

It appeared from the proceedings held in this case that the prosecutor's child having been found drowned in a well, her body being stripped of the jewels she was accustomed to wear, and suspicion having lighted upon the prisoner, a cooly woman who had been in the habit of taking the child about with her to cut grass, she was accordingly apprehended and confessed, that being pressed by want she had stripped the deceased of her jewels and thrown her into the well in which the body was discovered, and that she produced from her house certain jewels which were identified as having been worn by the deceased.

Before the Criminal and Circuit Courts the prisoner retracted her Police confession (which however was proved to have been made by her voluntarily,) and endeavoured to account for the possession of the jewels which belonged to the deceased, by stating that she had found them upon the brink of the well in which the child was drowned.

to defect of education, and not of capacity, it will be the duty of the Judge to postpone the examination of the case for a short interval, and direct the parents, or some other competent person, to instruct the child in the nature and obligation of an oath and of the consequences of perjury;—and if upon an examination subsequent to such instruction, it shall be manifest that the child does then understand the nature of an oath, the oath should be administered and the evidence recorded accordingly.

The Judges desire that you will communicate these instructions to the several Criminal Judges within your Division, forwarding to them at the same time a copy of the Circular Order of the Court of the 15th April, 1819.

8th March, 1838.
Sulabakal's case.

The Judge on Circuit (H. Dickinson) considered the evidence sufficient to the conviction of the prisoner of the murder laid to her charge, and referred the trial to the Foujdaree Udalt with a recommendation that she should be sentenced to suffer capital punishment.

By the Court of Foujdaree Udalt—A.D. Campbell, 3rd Judge.—
“ The prisoner is convicted on her Talook confession, proved to be
“ quite voluntary, and her own production of the child's ornaments of the murder charged. She is clearly liable to a sentence of death. But it is evident that there existed no malice
“ against the child, and that dire want alone was the origin of
“ the crime. I think that where no evidence of the deed exists,
“ but her own confession, that we are bound to take this also into
“ consideration ; and as at the time much distress existed in the
“ district, I will join either of my Colleagues in sentencing her
“ for life to imprisonment with labor and transportation in lieu
“ of capital punishment.”

John Bird, 1st Judge.—“ Of the wretched woman's guilt there
“ can be no question, but I regret to be obliged to add that I do
“ not see any grounds for extending mercy to her. There is no
“ thing to show that she was in a starving condition, and the circumstance of her having no malice against the child is no more
“ than what is invariably the case in child-murder for the sake of
“ the ornaments upon it. If she had been in a state of starvation
“ she would have stolen grain or food or money, and even had it
“ been shown that she was in a state of destitution, such would
“ have been no excuse for *murder*, though it would have been for
“ *theft*.”

“ I concur with the Presiding Judge in thinking that the prisoner must be sentenced to suffer death.”

The Acting 2nd Judge Mr. Oakes concurring with the 1st Judge that there was nothing in the circumstances of the case which would justify a mitigation of punishment, the prisoner was sentenced to suffer death.

CHENNI,

Versus

TIRUMALAI.

Charge—*Murder.*

4th August, 1838.
Tirumalai's case.

The prisoner was tried at Salem at the 1st Session of 1838 for the murder of his wife by beating her on the head with stones.

The prisoner pleaded guilty, alleging that the crime had been committed by him in a transport of rage in consequence of certain abusive expressions made use of to him by his wife, coupled with her refusal to return to his house, which she had quitted a few days previously.

Prisoner convicted of the murder of his wife; but on the ground that the act was not premeditated, but was the effect of sudden ungovernable passion, to which he had been excited by his wife's obstinate refusal to return to his house, and by her violent abuse of him, capital punishment was remitted and the prisoner sentenced to transportation for life.

It appeared from the evidence that when the murder was committed, the deceased was living in her brother's house, to which the prisoner had recently on several occasions repaired, and endeavoured to induce her to return to him, but without success; and the Judge on Circuit (G. S. Hooper) considering, with reference to

the circumstances of the case, and especially adverting to the fact that the prisoner was shown not to have had any weapon in his hand, when he went in search of his wife, on the day the deed was perpetrated, that the act was not *premeditated*, but the effect of sudden ungovernable passion, to which he had been excited by his wife's obstinate refusal to return home with him and her violent abuse of him, recommended that the prescribed penalty of the Law should be mitigated to transportation for life.

The Court of Foujdaree Udaltut (present J. Bird and T. A. Oakes) concurred in the prisoner's conviction of the murder of his wife, and upon the grounds assigned by the Circuit Judge in support of his recommendation, sentenced the prisoner to transportation for life.

TANUKU VIRAPPA,

Versus

1. DUDACULA HONNURUGADU,
2. NARSI REDDI,
3. GUREWI REDDI.

Charge—House Breaking and Theft and Receiving Stolen Property.

24th August, 1838.

The case of Dudacula Honnurugadu and two others.

Ruled by the Court of Foujdaree Udalt that under the provisions of Clause Second, Section IV. Regulation VI. of 1822 and Clause Second, Section III. of the same Regulation, as amended by Section IX. Regulation I. of 1825, the fact of property stolen having exceeded 300 Rupees renders the receiver of any portion of such property punishable only by the Circuit (Session) Court.

The prisoners were committed to take their trial before the Circuit Court at Cuddapah upon an indictment charging the 1st prisoner with having, on the night of the 26th January 1838, broken into the house of one Kaunna Ganganna (6th witness in the case) and stolen from a bag, under the head of the prosecutor, who was sleeping in the said house, corals valued at Rupees 307-4-0, the property of the prosecutor, and the 2nd and 3rd prisoners with having received part of the said stolen property, knowing it to have been stolen.

On perusal of the evidence the Judge on Circuit (Malcolm Lewin) remanded the case to the Criminal Judge for disposal, observing that the 1st prisoner should have been indicted as a receiver, there being no proof against him of the commission of theft, but that none of the prisoners were liable to be tried before the Court of Circuit as receivers of stolen property "because the property concerned in the case was not obtained under any of the circumstances described in Clause second, Section IV. Regulation VI. of 1822, nor did the circumstances described in the Clause which follows apply to them," and that the case was therefore determinable by the Criminal Court under the provisions of the fourth Clause of the above-mentioned Section.

The Acting Criminal Judge (P. H. Strombohm) being of opinion that the commitment of the prisoners for trial to the Court of Circuit was correct, requested that the point might be referred to the Court of Foujdaree Udalt, recording the following observations for the consideration of that Court.

24th August, 1838.
The case of Dudacula
Honouragulu and two
others.

“ By Clause second, Section IV. Regulation
“ VI. of 1822 all prisoners who may appear to
“ the Criminal Judge from the investigation
“ held by him to be guilty of having purchased or received stolen
“ property of any description, knowing at the time that such prop-
“ erty had been obtained in the perpetration of robbery by open
“ violence or of *theft*, accompanied by any of the aggravating
“ circumstances described in Clause second, Section III. of this
“ Regulation, shall be committed for trial before the Court of
“ Circuit, and by Clause second, Section III. above quoted, among
“ other provisions, it is enacted that the Criminal Judge shall
“ also commit for trial before the Court of Circuit any prisoners
“ charged with theft (although not attended with the aggravating
“ circumstances above mentioned,) who from any *other* peculiar
“ circumstances of the case *may appear to him* deserving of a supe-
“ rior punishment, than the Criminal Judge is authorized to inflict
“ under the following Clause of the said Section.

“ Now it appears to me, that the scale of punishment for receiv-
“ ing stolen property follows that awarded for the theft itself ; and,
“ as by Section IX. Regulation I. of 1825 all thefts of property
“ exceeding 300 Rupees are taken from the jurisdiction of the
“ Criminal Judge, and as the property stolen is stated to exceed in
“ value 300 Rupees, I think that the case, upon the indictment
“ being amended, which has been done, should be decided by the
“ Circuit Court.”

In forwarding the Acting Criminal Judge's remarks the Circuit Judge observed, that if the case were governed by analogy, he should be disposed to lean to the opinion of Mr. Strombom, but that it appeared to him, that where a penal enactment was plainly expressed, which was the case in the present instance, it must be followed strictly.

The Court of Foujdaree Udalt (present John Bird, T. A. Oakes and A. D. Campbell) concurred in the opinion of the Acting Criminal Judge, that the circumstance of the property stolen on the occasion of theft, a portion of the proceeds of which the prisoners were charged with having received, exceeding 300 Rupees in value, was sufficient to take the case out of the jurisdiction of the Criminal Court.

21th August, 1838.
The case of Dadacula
Honnurugadu and two
others

The Court observed, that " Clause second, Section IV. Regulation VI. of 1822 declared that all purchasers or receivers of stolen property, obtained under any of the aggravating circumstances described in Clause second, Section II. or Clause second, Section III. of that Regulation, should be committed by the Criminal Judge to take their trial before the Court of Circuit."

The fact of the value of the property stolen having exceeded 300 Rupees was not one of the circumstances of aggravation specified in Clause second, Section III. Regulation VI. of 1822; but that provision, the Court remarked, had been amended by Section IX. Regulation I. of 1825, and such fact is therein declared to be a circumstance taking the case out of the jurisdiction of the Criminal Judge, and accordingly it appeared to the Court to fall within the scope of the specification of circumstances, the existence of which rendered necessary the commitment of the prisoners for trial before the Court of Circuit.

The prisoners were therefore re-committed to the Court of Circuit, and on conviction as receivers, were sentenced respectively to three years' imprisonment with hard labor in irons.

PUTTA LATCHIGADU,

Versus

CHADU VENKATARAMUDU.

Charge—Murder.

5th September, 1838.
Chadu Venkataramudu's
case.

The prisoner was charged before the Court of Circuit at the 2nd Session held at Nellore for 1838 with having, at about $\frac{1}{2}$ past ten o'clock on the morning of the 12th February 1838, thrown a stone at the prosecutor's younger brother, Polugadu, which struck him on the left side of his belly, and immediately caused his death.

The prisoner convicted of having killed the prosecutor's brother by throwing a stone at him, was found guilty only of culpable homicide by the Foudaree

It was proved in evidence that the stone was thrown by the prisoner at the deceased in a fit of passion in consequence of the deceased refusing to pay him a debt due by him; they having been previously on friendly terms.

5th September, 1838.
Chadu Venkataramudu's
case.

Udalut, on the ground that there was no intent to kill, and was sentenced to three years' imprisonment with hard labor in irons.

The prisoner confessed the crime before the Police and likewise before the Criminal Court, but when arraigned before the Court of Circuit, denied all recollection of the circumstances, pleading previous insanity, and pretending not to be in the full possession of his senses upon the trial.

The Judge of Circuit (J. B. G. P. Paske) considered it to be clearly established in evidence that the prisoner was perfectly in his right mind when he killed the deceased, and considered him convicted of the crime of murder, but recommended that with reference to the circumstances of the case, the capital punishment should be remitted, and a sentence of five years' imprisonment with hard labor in irons should be passed.

The Court of Foujdaree Udalut (present J. Bird and A. D. Campbell) on the ground that it appeared from the evidence, that the prisoner in throwing the stone, which caused the death of the deceased, did not intend to kill, and did not use an instrument likely to cause death, convicted him only of culpable homicide, and sentenced him to three years' imprisonment with hard labor in irons.

GOVERNMENT.

Versus

- | | |
|-------------------------|--------------------------|
| 1. KOTA RAMUDU, | 10. PASUPULETI PEDDA BA- |
| 2. GOLLA JAGANNAIKULU, | LAYA, |
| 3. GUNDAYA, | 11. KHASA KODUNDARAMU- |
| 4. KALU NARASIMHALU, | DU, |
| 5. BILLA MUTTAYA, | 12. KUNISAYI, |
| 6. JANAKIRAMUDU, | 13. MALASHETTI VENKATA- |
| 7. SUVARA SRIRAMULU, | DAS, |
| 8. KANAKUNTU NARASIMHA- | 14. KOTA NARASIMHALU, |
| LU, | 15. KHASA NARASIMHALU, |
| 9. KHASA VENKAPPA, | 16. NARASAYA. |

Charge—*Murder and Gang Robbery by Open Violence.*

16th March, 1839.
The case of Kota Ramu-
du and others,

The prisoners were tried at Masulipatam at the 3rd Quarterly Session of 1838, upon an indictment charging them with having, at about

16th March, 1839.

The case of Kota Ramudu and others.

The 3rd and 4th prisoners in this case were convicted by the Court of Foujdaree Udalt of having been concerned in an attack upon the Talook Treasury at Ellore, and in the murder of two Sepoys on guard, and were sentenced to transportation for life; their conviction being based upon confessions made by them before the Acting Magistrate of Masulipatam.

It subsequently appeared that the offence of which the prisoners had been convicted, had been committed by a gang of Lancer Bhat Dacoits, certain members of which, having been admitted as approvers by the Assistant General Superintendent for the suppression of Thuggee, and examined by that Officer with a view to ascertain the number and nature of the crimes in which they had been concerned, stated that the attack upon the Ellore Treasury in 1838 had been made by their gang, mentioned the names of the persons concerned in it, and stated that besides those named by them no other persons were present.

The statements in question having been corroborated by depositions taken from other members of the same gang at Patna and Jhausee, were considered by the Court of Foujdaree Udalt to be conclusive to the innocence of the two prisoners who had been sentenced to transportation for the offence in question; and the matter was reported

seven o'clock on the evening of Friday the 23rd March 1838, proceeded in a gang, in company with the 1st, 2nd, 3rd, and 4th witnesses in the case, and certain other persons not apprehended, armed with spears, swords, and other weapons, to the Talook Treasury in the town of Ellore, stabbed and killed two Sepoys of the 27th Regiment N. I., who were then on guard over it, entered the room in which the treasure chest was kept, and broken it open with an axe or hatchet, with intent to plunder the treasure, which had been removed on the preceding day.

It appeared from the evidence in this case that at about 7 o'clock in the evening of the 23rd March 1838 an attack was made upon the Talook Treasury at Ellore by a body of armed men, who killed two Sepoys on guard, and having broken open a chest in which the remittances for the pay of the Sepoys stationed at Ellore were usually deposited, but which was empty at the time, effected their retreat through the town, without any clue having been obtained to their identity, or to the quarter from which they had come.

The Acting Magistrate of Masulipatam, to whom the circumstance was immediately reported by the Tahsildar, and likewise by the Officer Commanding the Military Detachment, at Ellore, repaired forthwith to that place, and on the 29th of March reported the occurrence to the Court of Foujdaree Udalt, and applied for sanction for the offer of a reward for the apprehension of the offenders, which was sanctioned accordingly on the 5th April 1838. Previously however to the receipt of the orders of the Court of Foujdaree Udalt, the Magistrate effected the apprehension of twenty persons, four of whom accused the remainder of having been concerned with themselves in the

16th March, 1839.

The case of Kota Ramudu and others.

to Government; and orders were issued for the release of the two prisoners, one of whom was brought back to Madras; the other having previously demised.

Of the sixteen prisoners tried by the Court of Circuit, fourteen were acquitted by the Circuit Judge in concurrence with his Mahomedan Law Officer, but were detained in custody pending the final judgment of the Foujdaree Udaltut upon the trial.

This proceeding elicited a discussion from the Judges of the Foujdaree Udaltut, (who considered that the prisoners in question had been improperly acquitted,) as to whether it was competent to the Foujdaree Udaltut to pass sentence on them, the Circuit Judge, notwithstanding his recorded concurrence in the verdict of acquittal of the Mahomedan Law Officer, having evidently referred the trial as regarded all the prisoners charged, for the final judgment of the Foujdaree Udaltut.

It was decided that the provisions of Clause second, Section XV. Regulation VII. of 1802 precluded the Court of Foujdaree Udaltut from interfering with a verdict of acquittal recorded by a Circuit Judge in concurrence with his Mahomedan Law Officer.

attack upon the Treasury, and he requested authority for the admission of these four persons as approvers, which, after some correspondence on the subject, was eventually granted under date the 23rd April 1838.

The Magistrate in the mean time had forwarded to Government a report of the outrage, with copies of the depositions of three of the persons, who were admitted as approvers, in which depositions it was stated that the attack upon the Treasury had been made by twenty persons dependants of the Zemindar of Ellore, who three days previously had gone to reside at a house belonging to him in the neighbourhood of Ellore, called Kyd's Bungalow, where, on the evening of the third day of his stay, twenty of his household slaves assembled, and, headed by one Kota Ramudu (the 1st prisoner in the case), proceeded, armed, by a circuitous route to the Talook Treasury in Ellore, killed the two Sepoys on guard, broke open a cash chest which was empty, and effecting their retreat through the town by a shorter route, in the course of which one of the gang speared a Brahmin whom they met with in the road, returned to Kyd's Bungalow, from which, after a brief delay, they proceeded with the Zemindar, his brother, and brother-in-law, to the Zemindar's Palace at Sanivarapupetta.

It was also stated in one of the depositions (that of the 2nd approver,) that on their way to the Treasury the gang met two Paigastis, with whom some of them entered into conversation.

The Magistrate's report, and the depositions submitted with it, were forwarded by Government to the Court of Foujdaree Udaltut, with a request that the Court would issue such instructions thereon as might appear to them to be required, the Magistrate having

16th March, 1839.
The case of Kota Ramu-
du and others.

applied for orders in regard to the adoption or otherwise of measures against the Zemindar; and the Court of Foujdaree Udaltut accordingly, on the 27th April 1838, called upon the Acting Magistrate to report for their further information, what had led to the disclosures made by Khasa Narasu the 1st approver, whose evidence, it appeared, had led to the apprehension of the other persons in custody; at whose instance that individual had been induced to appear before the Magistrate; whether or not it appeared that he had enmity against the Zemindar of Ellore or against Kota Ramudu, named by him as the planner of the expedition and leader of the gang; whether or not Kota Ramudu had been apprehended; what account the Brahmin said to have been speared, gave of that transaction; what was said by the Paigastis who were stated to have met the gang on their way to the Treasury; and whether the information against the Zemindar had been in any way corroborated by other evidence or not.

In reply to this requisition the Magistrate stated, that in consequence of its having been generally reported at Ellore, and of his having received several anonymous letters to the effect, that the Zemindar was concerned in the robbery, he instructed Nimujana Das, the Naib of the District Sibbandi, "a man holding the highest character for intelligence, zeal and general good conduct," to endeavour by all the means in his power to ascertain whether or not there was any truth in the reports in question; that he accordingly selected six or eight peons out of employ, whom he disguised as beggars, &c. and directed them to hang about the Zemindar's house and the village in which it is situated, to enter into conversation with the people about and bring him any intelligence they might gain; that after about two days they fell in with an old lame man, a former servant of the Zemindar, who told them if he could get the reward that had been offered, he would tell who had committed the robbery; that on their promising him the reward, he mentioned Khasa Narasu, the 1st approver, as one of the robbers, upon which the latter was enticed by them out of the village, and then seized and brought to the Naib, "who accused him of being implicated, told him that he knew all about the matter, and that there was no use in denying it, and, after alarming him in this manner, advised him to have no fear, but to come and state all the circumstances to

16th March, 1839.
The case of Kota Ramu-
du and others.

the Magistrate," before whom he was brought and gave the statement already forwarded to the Court of Foujdaree Udalut. The Magistrate gave it as his opinion that the said Khasa Narasu had no enmity against the Zemindar. He stated that Kota Ramudu had been apprehended; that the Brahmin said to have been wounded, fully corroborated the statement of the approvers; that the fact of his having been wounded and having proceeded to Masulipatam to get cured, had been ascertained; and in regard to the Paigastis, whom the approver said had been met by the gang on their return from the Treasury, he had sent for five of the persons employed as Paigastis, who, on first being interrogated, denied all knowledge of the matter, but after having been informed by the Magistrate "that it was evident from the confessions of the robbers that some of them must have met them, and that he was determined to know who they were, and they must follow him to Masulipatam;" two of them subsequently came forward and stated, "that they were servants of the Zemindar, and feared to say any thing against his people, and that they did not wish to leave their village," but that it was true that they had met a party of men on the night in question near the Zemindar's Village, but that it was very dark, and they only recognized two persons, who, however, were amongst the prisoners. In regard to the Zemindar himself the Magistrate reported, that he considered the evidence amply sufficient to warrant his apprehension, but that he thought it advisable to wait the result of the trial of the other persons, before taking any further steps regarding him.

Previous to the receipt of the Magistrate's report on the several points above adverted to, the Court of Foujdaree Udalut were furnished with two Petitions addressed by the Zemindar to the Governor in Council, in which he complained of the proceedings of the Magistrate of Masulipatam, asserted his innocence, and that of his dependants, of any participation in the attack which had been made on the Treasury, and alleged that the confessions of the approvers had been extorted by the Naib of the Sibbandi, who had been prevailed upon by his (the Zemindar's) enemies to aid in the fabrication of the charge against his people and himself.

A copy of the Magistrate's report was forwarded to Government with the opinion of the Foujdaree Udalut that no steps should be

16th March, 1839.
The case of Kota Ramu-
du and others.

taken against the Zemindar, until the trial of the prisoners, then in custody, was concluded; and the Zemindar's Petitions were returned, the Court observing that they "found nothing therein which could form a ground of interference with the proceedings of the Acting Magistrate or with the ordinary course of justice."

The Magistrate's investigation was accordingly permitted to proceed; and the 3rd and 4th prisoners having confessed before him that they had been present with the other prisoners at the attack upon the Treasury, and the 5th prisoner having likewise made a partial confession, and the approvers having with certain variations confirmed upon oath the statements previously made by them; the prisoners were all forwarded to the Criminal Court and were committed by that tribunal for trial before the Court of Circuit; the 3rd, 4th and 5th prisoners, having before the Criminal Court retracted their previous confessions.

Except in the case of the 3rd and 4th prisoners, whose confessions were duly proved, the evidence for the prosecution rested principally upon the testimony of the approvers; consistent in its general outline, but containing in its details numerous discrepancies and contradictions, which were considered by the Circuit Judge to render it worthless for the conviction of the accused, and which are noted in the following abstract of the evidence of those individuals, recorded before the several authorities before whom they deposed.

The 1st approver Khasa Narasu in his first statement before the Magistrate, not on oath, deposed, that three days before the attack on the Treasury, the Zemindar quitted Sanivarapupetta, where he usually resides, and went to Kyd's garden, in consequence of certain Court Peons having come; that on the evening of the third day, after sunset twenty slaves, including himself, assembled at Kyd's garden and were ordered by the Zemindar to accompany Kota Ramudu, 1st prisoner, who, with his younger brother Venkataramudu, led them to the South-western side of the Town of Ellore, where they entered it by a street leading to the Dancing girls' lane, down which they proceeded till near the Cutcherry, where they were told of the object of the expedition, upon which they refused to go on, but being threatened by Kota Ramudu obeyed; that he was posted with five others, all armed with matchlocks and guns, in the street,

16th March, 1839.
The case of Kota Ramu-
du and others.

and that the rest of the gang, preceded by Ramudu and his brother, the former armed with a spear, and the latter with a sword, rushed on the guard, killed the Sepoys, broke open the cash chest, and returned by the Pagoda lane, where one of them stabbed a Brahmin, to Kyd's garden, where the Zemindar, his elder brother, and brother-in-law were then present, after which they all returned to Sanivarapupetta, the two brothers in palanquens, and Surarow, the brother-in-law, on foot.

In this examination witness named all the prisoners and several others as having formed the gang.

When examined on oath by the Magistrate witness identified the sixteen prisoners, and acknowledged the truth of his former deposition.

Before the Criminal Court he deposed nearly to the same effect ; stating however that the Zemindar, and his brother, and Surarow their brother-in-law, all returned to Sanivarapupetta in palanquens, whereas he had stated before the Acting Magistrate, that Surarow went on foot. He mentioned the 5th, 6th, 8th, 11th, 12th, 14th, 15th and 16th prisoners, all slaves of the Zemindar, as having accompanied himself from Sanivarapupetta to Kyd's garden on the evening in question.

Before the Court of Circuit he repeated the general statement he had already given ; deposing, however, in contradiction of his former deposition before the Acting Magistrate, that Kota Ramudu was not armed, when the attack upon the Treasury was made ; that Surarow, the brother-in-law of the Zemindar, as well as the Zemindar himself, and his elder brother, returned in palanquens from Kyd's Bungalow to Sanivarapupetta ; whereas he had stated before the Magistrate that the said Surarow returned on foot ; and adding the 13th prisoner to the list of persons named by him before the Criminal Court as having accompanied him from Sanivarapupetta to Kyd's Bungalow on the evening in question, previous to the attack on the Treasury.

The 2nd approver Khasa Kakamuri Pullaya, a slave of the 1st prisoner, in his first statement before the Magistrate, not on oath, stated that at four o'clock on the afternoon of the day of the robbery he went from Sanivarapupetta, in company with his master (the 1st prisoner) and three other individuals, to Kyd's Bungalow,

16th March, 1839.
The case of Kota Ramu-
du and others.

and proceeded thence at 7 o'clock in the evening with a gang of about twenty persons, fourteen of whom he named, to the Talook Treasury at Ellore, where they were challenged by the Sepoy on guard outside, when Kota Narasaya, the 14th prisoner, stabbed the Sepoy, and the gang entered the Treasury, stabbed the other Sepoy on guard inside, broke open the cash chest, in which he heard that nothing was found, and then returned by the Pagoda lane to Kyd's garden, from which place they all returned with the Zemindar, his elder brother, and brother-in-law, to Sanivarapupetta; the whole party walking by torch light, accompanied by an empty palanqueen. He stated that when the gang left the garden he was told they were going to hunt, and was not aware of the real object of the expedition, until the Sepoy was stabbed; and he added that on their way to the Treasury the gang met two Paigastis, with whom some of them spoke.

In his re-examination on oath before the Magistrate, this witness deposed to having recognized all the sixteen prisoners as having been with the gang when they set out to commit the robbery; he stated that Venkataramudu, the 1st prisoner's brother, did not accompany them, that he did not see the Sepoys stabbed, and that the Zemindar and Basavaraz Mullaya, his Tanadar, one of the persons he had previously mentioned as having accompanied him with the 1st prisoner from Sanivarapupetta to Kyd's garden, were the only persons present at Kyd's garden when he arrived there.

Before the Criminal Court he stated, that about twenty days before, the Zemindar's elder brother and brother-in-law, the 1st prisoner, the Zemindar's Serishtadar, Basavaraz Mullaya and Badjapalli Basavaraz came in the evening to Kyd's garden, where the Zemindar then was, and consulted with him for a time, after which the 1st prisoner came out, conducted the slaves, who were posted there at the time with their spears, under the impression that it was their master's intention then to return to Sanivarapupetta, into the town of Ellore, and upon their arrival at the vicinity of the Talook Cutcherry (adopting the 1st approver's version of the story for the first time) he revealed to them the object of the expedition, and they refused to proceed, but upon being threatened advanced with him, killed the Sepoys, broke open the cash

16th March, 1839.
The case of Kota Ramu-
du and others.

chest, and returned to the garden, having stabbed a man whom they met in the Pagoda Jane, as stated by the 1st approver. He further deposed that he saw the Sepoy on guard outside the Treasury stabbed, but in contradiction of the 1st approver's statement denied, that previous to their setting out on their expedition the Zemindar had come out of the Bungalow or spoken to any one.

In his examination before the Court of Circuit this witness for the first time mentioned Kota Venkataramudu, the 1st prisoner's brother, as having been one of the persons who accompanied him from Sanivarapupetta with the Zemindar's elder brother and brother-in-law, whom in his statements before the Magistrate he had not mentioned as having been of the party; and in direct contradiction of his deposition before the Criminal Court, he asserted that previous to their departure from Kyd's Bungalow, the Zemindar came out of the bungalow and bade them follow the 1st prisoner; he also denied having seen the Sepoy on guard outside the Treasury killed by the 14th prisoner, Narasaya; of which circumstance he had alleged that he was an eyewitness, both before the Magistrate and before the Criminal Court.

The 3rd approver S. Guruvaya, also a slave of Kota Ramudu, on his examination before the Acting Magistrate, without oath, admitted his having been one of the gang which attacked the Treasury; naming the 1st prisoner, his master, as the leader of it, and the 6th prisoner with some other persons as having been present; he deposed that the 1st prisoner's brother Venkataramudu did not accompany the gang, that he did not see the Sepoys killed, and made no mention of the circumstance of the gang having refused to proceed, when they arrived near the Cutcherry.

When examined on oath before the Magistrate this witness identified six of the prisoners as having been present with the gang.

Before the Criminal Court he confirmed his former statements to the effect that he had accompanied the gang to Ellore, but entered into further details, with the addition of the 1st approver's account of Kota Ramudu having addressed the gang on their arrival near the Cutcherry, and their refusal to advance, to which circumstance he had made no allusion in his former depositions.

16th March, 1839.
The case of Kota Ramu-
du and others.

He also deposed to all the sixteen prisoners having accompanied the gang; mentioning their names, although he was only able to name about one-third of them in his previous examinations.

Before the Court of Circuit he mentioned, in addition to his previous statements, the circumstance of the Zemindar having come down to the garden on the evening in question, previous to the departure of the gang for Ellore, and bade them to follow the 1st prisoner Kota Ramudu; and he likewise stated that he had heard of a Brahmin having been stabbed near the Pagoda; to which circumstance he had made no allusion in his previous depositions; and that the Zemindar, his brother and brother-in-law returned to Sanivarapoopectta on the same night in their palanqueens.

The 4th approver Venkaya in his first examination before the Acting Magistrate, not upon oath, deposed to his having on the night in question proceeded with nineteen other persons headed by the 1st prisoner to the Treasury at Ellore, where the Sepoy on guard outside, challenging the gang, was stabbed by the 6th prisoner Janakiramudu, after which he saw one Peddapuli Jaggaya stab the Sepoy on guard inside, and the gang broke open the cash chest, but finding nothing in it returned to Kyd's Bungalow, whence they all proceeded on foot with the Zemindar, his brother, and brother-in-law; one empty palanqueen being carried with them.

He also stated that the Zemindar was present on the road near the Bungalow when the gang were coming, and ordered them to take arms, but said nothing else, that the Zemindar's brother-in-law and younger brother were with him, but that his elder brother was at Sanivarapupetta. In answer to a question from the Magistrate, "where they had met the Paigastis," he stated that they had met two Paigastis near some cocoanut trees. He denied that the gang had refused to go on with Kota Ramudu.

When examined on oath before the Acting Magistrate, this witness identified two of the prisoners, stated that the Sepoy on guard outside the Treasury was stabbed by Jaggaya, (meaning apparently the 2nd prisoner, whom he afterwards named before the Circuit Court as having stabbed this Sepoy) and the other Sepoy by Janakiramudu; that the Sepoy outside after being wounded was stabbed by the 3rd prisoner Gundaya; and that after having broken

16th March, 1839.
The case of Kota Ramu-
du and others.

open the cash chest they returned to Kyd's Bungalow ; a Brahmin having been stabbed by one of the party on the way ; and that the same night they returned to Sanivarapupetta, meeting two Paigastis in the road.

This witness deposed nearly to the same effect before the Joint Criminal Judge as in his last examination before the Magistrate ; with this variation, that before the latter authority he named all the prisoners and declared that they were all present with the gang which attacked the Treasury.

In his cross examination by the Criminal Court he stated that he did not know what was the object of the expedition until the attack was made ; that on their way to Ellore the 1st prisoner promised to give them from 10 to 20 Rupees each ; but for what, he did not know ; and that himself, the 4th prisoner and one Virasami accompanied the 1st prisoner to Kyd's Bungalow on the evening in question, previous to the attack.

Before the Court of Circuit he added the 3rd prisoner to those already named by him as having accompanied the 1st prisoner from Sanivarapupetta to Kyd's garden, in direct contradiction of the 2nd approver's statement, according to which the 1st prisoner was accompanied by entirely different persons on the occasion in question. He also stated in contradiction to his first deposition before the Magistrate, that the Zemindar, his brother, and brother-in-law returned to Sanivarapupetta in their palanqueens.

The remainder of the evidence for the prosecution consisted of that of the Brahmin said to have been wounded, who confirmed the statements of the approvers on this point, of the Tahsildar and peons and other persons who were present at the Talook Cutcherry when the alarm was raised, of the Sepoys who formed the guard, of the two Paigastis who stated that they met the gang near Sanivarapupetta, and one of whom before the Criminal Court and Court of Circuit named the 2nd approver Pullaya as having exchanged some words with him on that occasion, and of other inhabitants of the town of Ellore, some of whom stated that they were pelted with stones by the gang, as they were making off from the Treasury, after having killed the two Sepoys on guard.

The statements of the Tahsildar and of the Sepoys who formed the guard to which the deceased belonged were contradictory ; the

16th March, 1839.
The case of Kota Ramu-
du and others.

former alleging that the two Sepoys who were murdered, and the one by whom the alarm was raised, were the only Sepoys present when he repaired to the Treasury ; while the latter asserted that they were at their post, and witnessed the attack, but that being unable to get at their arms, which were inside the Treasury, they ran for assistance to the Tahsildar, who shut the door of his Cutcherry, and did not come out until after the arrival of the Commanding Officer, who was sent for immediately after the gang had taken their departure.

The Tahsildar's story was supported by the peons, and other persons present in the Cutcherry when the alarm was raised, and who stated that he, with others, immediately repaired to the Treasury, and that only one Sepoy was present, besides those whom they found lying murdered when they arrived.

The prisoners cited several witnesses in their defence, principally to prove alibis, of whom two persons called by the first prisoner deposed to the 2nd approver Pullaya having been at Masulipatam when the attack upon the Treasury took place.

The Law Officer of the Circuit Court acquitted all the prisoners, excepting the 3rd and 4th, whom he convicted upon their confessions before the Magistrate, and declared liable to Ookoobut.

The Circuit Judge (J. Haig) stated his concurrence in this Futwa, but placed all the prisoners excepting the 3rd and 4th under a requisition of security ; - and referring the trial for the consideration of the Foujdaree Udalt, directed that all the prisoners should be detained in custody, pending the receipt of the final judgment of that Court ; the warrant after specifying the amount of security to be furnished by each of the prisoners concluding thus ; " but it " is ordered that you be detained in confinement until the said sentence shall have been confirmed by the Court of Foujdaree Udalt, " to whom the whole record of the trial will be submitted for their " consideration and final decision."

In his letter of reference submitted with the trial, the Circuit Judge recommended that the 3rd and 4th prisoners should be sentenced respectively to imprisonment with hard labor in irons for the term of fourteen years, referring to the Calendar previously submitted by him for the reasons therein afforded for his concurrence with the Mahomedan Law Officer in the acquittal of the

16th March, 1839.
The case of Kota Ramu-
du and others.

other prisoners charged, viz. the contradictions in the testimony of the approvers, the absence of collateral evidence, and the evidence adduced to prove the presence of the 2nd approver at Masulipatam upon the day the offence charged against the prisoners was committed at Ellore.

The Court of Foujdaree Udalut (present J. Bird, A. D. Campbell) on perusing the record of the trial, dissented entirely from the Circuit Judge in his appreciation of the evidence, and recorded their opinion, that there had been "a most lamentable failure of justice in the case, and that the acquittal of the fourteen prisoners reflected most deeply on the judgment of the Circuit Judge."

In respect to the part said to have been taken by the Zemindar immediately preceding the departure of the gang, the Court of Foujdaree Udalut concurred with the Circuit Judge in considering that the evidence was contradictory and inconclusive, and also in respect to the persons of the Zemindar's family who were then present at Kyd's gardens; but the other contradictions noticed by the Circuit Judge, the Court deemed altogether immaterial, and as not in the least degree affecting the general credibility of the approvers, whose statements in regard to the main facts deposed to by them, the Court of Foujdaree Udalut considered to be fully entitled to belief, and that there could be "no question as to the fact of the 1st prisoner Kota Ramudu having been the leader of the gang which committed the crime charged."

Adverting to a somewhat inconsistent opinion recorded by the Circuit Judge in his letter of reference regarding the evidence cited to establish the presence of the 2nd approver at Masulipatam on the day the attack upon the Ellore Treasury took place, and so to prove that he could not have been present at the scenes he described himself to have witnessed, the Court of Foujdaree Udalut recorded the following remarks.

"The Court have in vain endeavoured to reconcile the opinion given in the 30th para. with that expressed in the 34th para. of Mr. Haig's letter. In the former Mr. Haig has expressed his opinion, that the evidence of the witnesses cited to establish the presence of the 2nd approver at Sukurullabada, in the town of Masulipatam, on the night on which the Treasury at Ellore was attacked, appeared to him to establish that fact, while in para. 34, af-

16th March, 1839.
The case of Kota Ramu-
du and others.

“ter stating, that he could discover no motive which could induce the 2nd approver falsely to confess the crime which formed the charge in this trial, and that none has been whispered either by his master K. Ramudu, or by that master’s lord the Zemindar; Mr. Haig observes, that notwithstanding the apparent honesty with which their evidence was given by the witnesses who deposed to his (the 2nd approver) having been present at Masulipatam on the day on which he swore he accompanied the gang from Kyd’s garden to Ellore, ‘I am strongly inclined to suspect that they must have been bribed and suborned by the agents of his powerful masters.’”

“The latter the Court of Foujdaree Udalut consider as the right view of the evidence given by the witnesses in question;—for it appears much more likely that these witnesses should have sworn to false dates, than that the 2nd witness for the prosecution should within a few days have been induced to come forward with a confession implicating himself as well as the prisoners; without, as far as can be seen, the least inducement or object; and by which, he must have been aware, he rendered himself liable to be tried for murder, and eventually hanged.”

And in respect to the nature of the confessions made by the approvers the Court of Foujdaree Udalut stated their concurrence in an opinion expressed by the Acting Magistrate of Masulipatam that “they were such as no persons could have made, who were not cognizant of the facts related;” and they further observed that they considered “that the evidence of these approvers had been shown to be true on every point on which any test of their truth could be obtained, and that there had been no one circumstance brought forward, or even hinted at, to lead to the suspicion that the witnesses in question, either from enmity against the prisoners, or their masters, or from other causes, had been induced to give false evidence in the case.”

Adverting to the course adopted by the Circuit Judge, of ordering that the prisoners, whose acquittal had been pronounced by him, should be detained in custody, until a reference had been made to the Court of Foujdaree Udalut, to whom he submitted his sentence for final orders; the Court of Foujdaree Udalut remarked that “however much it was to be regretted, that persons

16th March, 1839.
The case of Kota Ramu-
du and others.

“ guilty of so great a crime, should escape with
“ impunity, this Court under the positive en-
“ actment contained in Clause second, Section
“ XV. Regulation VII. of 1802 would not be justified in depriving
“ the prisoners of the benefit of the Session Judge’s acquittal, or in
“ disturbing that judgment, which the Law has authorized him final-
“ ly to pass ; for no irregular reference of his can give the Court of
“ Foujdaree Udalut jurisdiction over prisoners whom he concurs
“ with his Law Officer in acquitting.”

The Court observed, that “ had the Session Judge in consequence
“ of doubts entertained by him in respect to the conviction or ac-
“ quittal of the prisoners in this most important case, hesitated to
“ act in conformity with Circular Order of the 23rd June 1835, and
“ therefore refrained from passing any verdict or sentence, and had
“ referred the trial to be finally disposed of by the Court of Foujda-
“ ree Udalut, they were of opinion that in such a case they might
“ have proceeded to pass judgment upon the ground that he had not
“ altogether concurred with his Law Officer ; but that having con-
“ curred with his Law Officer in the acquittal of the prisoners in
“ question, the Circuit Judge was not competent, so far as they were
“ concerned, to refer the trial to the Foujdaree Udalut, and that his
“ sentence of acquittal which was final under the Law above quoted,
“ could not then be over-ruled.”

The Court of Foujdaree Udalut accordingly directed that the
prisoners in question should be released on their furnishing the
prescribed security, and sentenced the 3rd and 4th prisoners to
transportation for life.

The Court of Foujdaree Udalut had previously, on the perusal of
the record of the trial, issued orders for the apprehension of the Ze-
mindar of Ellore, and for the institution of proceedings against
him, and they accordingly deferred issuing any final orders res-
pecting the approvers, considering it desirable that the ultimate
result of the proceedings against the Zemindar should in the first
instance be reported to them.

The Magistrate subsequently reported that, upon the apprehen-
sion of the Zemindar, the approvers “ all unanimously denied all
“ knowledge of the robbery, and stated that their former confessions
“ and depositions had been extorted from them by the Officers of Po-

16th March, 1839.
The case of Kota Ramu-
du and others.

“lice, and that, therefore, in the absence of
“any other evidence sufficient to justify the
“commitment of the Zemindar for trial, he
“had been compelled to release him.

“Upon the receipt of this report the Court of Foujdaree Udalut directed the release of the approvers, observing, that although those individuals “were unquestionably bound to discover fully
“and truly every circumstance within their knowledge, not only as
“regarded those who had been already tried, but also as regarded
“the alleged principal, viz., Naraya Apparow, and that having re-
“tracted their former evidence, when called upon on the present
“occasion to discover fully and truly every circumstance within
“their knowledge touching the crime of which he was charged,
“they had forfeited the pardon to which they would otherwise
“have been entitled in respect to the evidence given by them on
“the trial before the Court of Circuit, and were liable to be
“brought to trial on their former confessions before the Acting
“Magistrate, and upon the evidence forthcoming in the case;
“still it appeared to the Court of Foujdaree Udalut in defence of
“these men, that they might not have contemplated the pro-
“secution of the Zemindar, and that it was probable, that if he
“had been proceeded against in the first instance, they would
“have retracted their confessions and would not have given evi-
“dence in the case at all;” it being evident that “in their for-
“mer depositions they spoke of the part the Zemindar had in the
“transaction with unwillingness and hesitation.”

On the 1st January 1819 the Magistrate of Masulipatam forwarded to the Court of Foujdaree Udalut a correspondence which had passed between himself and Captain Ramsay, Extra Assistant to the General Superintendent for the suppression of Thuggee and Dacoity (at Nagpore), who reported that several members of a gang of Lansce Bhat or Kunjur Dacoits, apprehended by him about fifteen months before, had deposed to having been present at a Dacoity on the Government Cutcherry at Ellore, and that they asserted that the affair occurred about twelve years before, in the month of Asar (June-July)—Captain Ramsay added that “Ghatkia,” the Jemadar or leader of the gang, was then an approver at Jhansee, and that six of the Dacoits belonging to his gang, who were engaged in that affair, were also approvers at

16th March, 1839.
The case of Kota Ramu-
du and others

Jhansce or elsewhere. Captain Ramsay stated, that he was quite satisfied, that the affair related by his approvers, was the very Dacoity at Ellore which formed the subject of the trial at Masulipatam in 1838.

On subsequently forwarding authenticated extracts of the confessions of four of the approvers named Ghatkia Jemadar, Essaya, Jaggapa, and Gellu or Gudu, he stated that these approvers were all of the Lansee Bhat class, and had belonged to organized gangs of Dacoits, whose depredations had extended far into the Company's territories; and that they had all received conditional certificates of pardon, having been convicted and sentenced to imprisonment for life with hard labor in transportation beyond seas.

On perusing these depositions it was found that mention was made in them of two other persons named "Gaura" and "Panjob," as having been present at, and taken part in the perpetration of, the same Dacoity. It appeared that these persons were in confinement as approvers at Patna; and Captain Ramsay was requested to obtain and forward depositions from them also, touching the affair in question; which in due course were transmitted to the Court of Foujdaree Udalut, and were found to correspond with the statements made by the other members of their gang, who had previously been examined. The Judges of the Foujdaree Udalut had then before them six different depositions delivered in 1847, 1848, and 1849; not taken with any especial reference to the Dacoity at Ellore; but elicited in the course of examinations, to which the deponents were subjected with the view of ascertaining the number and nature of the crimes they had committed at different periods of their career. All of them concurred as to the persons who, besides themselves, were present on that occasion, and all concurred in declaring, that, excepting themselves and those whom they named, none others were present.

The Judges of the Foujdaree Udalut were of opinion that the statements contained in these depositions were conclusive as to the innocence of the two prisoners who had been convicted of having been concerned in the attack upon the Ellore Treasury, and sentenced to transportation for life; and they accordingly reported the matter to Government, with a recommendation that a free

16th March, 1839.
The case of Kota Ramu-
du and others.

pardon should be granted to the prisoners in question, and that the Governor of the Straits Settlements should be requested to send them back by the first opportunity to Madras.

This was granted; and the necessary communication having been made to the Straits Government, the 3rd prisoner Gundaya, the only one of the two who still survived, was sent back to Madras, and a present of money was bestowed upon him by Government, by way of compensation for the hardships he had undergone.

Orders were subsequently issued to the Magistrate of Masulipatam to ascertain from Gundaya the reasons which induced him to confess a crime of which he was innocent, and he was accordingly examined by that officer and stated that he had been mal-treated by the peons in whose custody he was placed and forced to make the statement delivered by him before the Acting Magistrate.

MANGALI GURADAKUVU,

Versus

1. PINDIKI BISAYI,
2. HADDU BISAYI.

Charge—*Murder.*

10th June, 1839.
The case of Pindiki Bi-
sayi and another.

The 1st Prisoner, charged with the murder of a man who had intruded at midnight in his house for the purpose, as the prisoner suspected, of criminal intercourse with his wife, was convicted of Culpable Homicide, and sentenced to fourteen years' imprisonment.

2nd Prisoner in this case tried upon a charge of murder having been proved to have struck the deceased two blows with a cudgel but acquitted of having joined in the commission of the

The prisoners were tried at Chicacole upon an indictment charging them with having, on the night of the 13th August 1838, murdered the prosecutor's son Bonnadokhuna by beating him with bludgeons and stabbing him with spears.

It appeared from the 1st prisoner's police confession, that on the night in question the 1st prisoner was sleeping in his house with his wife, when he was awoken by the deceased entering the house and laying hold of his wife; that on his awaking, the deceased ran out of the house and he followed him into the court-yard, where he seized him and beat him with a bludgeon, and then having pinioned him, with the assistance of the 2nd prisoner, who came up while he

19th June, 1839.
The case of Pindiki Bisi and another.

murder was sentenced to one year's imprisonment for the assault.

The Court of Foujdaree Udalt overruled an order passed by the Circuit Judge for the commitment of the 1st witness in this case, the wife of the 1st prisoner, observing that as other evidence existed, her examination as a witness was objectionable.

was struggling with the deceased in the court-yard, dragged him to a hill a short distance off, stabbed him to death, and threw his body into a watercourse.

The body was discovered in the watercourse on the following morning, and suspicion having been attracted to the 1st prisoner, in consequence of certain persons having heard the noise of the struggle which took place between him and the deceased in the court-yard the night before, when they recognized the voices of the 1st prisoner and the deceased, the 1st prisoner was taken into custody, and

delivered the confession, the purport of which has been already stated.

The 2nd prisoner was then apprehended, and to a certain degree corroborated the statement of the 1st prisoner, admitting that he had struck the deceased one blow with a bludgeon in the court-yard.

It was evident from the confessions of both the prisoners, that the deceased was supposed by them to have entered the 1st prisoner's house, for the purpose of criminal intercourse with his wife.

Before the Criminal Court the prisoners declared, that the deceased had been killed by the 1st prisoner in the court-yard of his house, under the impression that he was a thief, the 1st prisoner adding that he did not recognize him till the following morning, when the body was found.

Before the Court of Circuit the 1st prisoner repeated the statements made by him before the Criminal Court, and referred to the standing orders, authorizing resistance to robbers, in justification of his act.

The wife of the 1st prisoner, who was examined as 1st witness in the case, having before the Court of Circuit retracted the evidence she had given before the Criminal Court, was sent by the Circuit to the Criminal Court to be committed for perjury.

The Circuit Judge (J. B. G. P. Paske,) in concurrence with the Law Officer convicted the 1st prisoner of the murder charged, and the 2nd prisoner of having beaten the deceased with a stick, and referred the trial for the final judgment of the Foujdaree Udalt, re-

19th June, 1839.
The case of Pindiki Bilsayi and another.

commending that in consideration of the suspicious circumstances under which the deceased had intruded into the house of the 1st prisoner, when he met with his death, the prescribed penalty of the Law should be commuted in the case of the 1st prisoner to fourteen years' imprisonment with hard labor in irons, and that the 2nd prisoner should be released, the Circuit Judge considering the evidence insufficient to show that he had joined in the commission of the murder, and that the imprisonment he had already undergone, was a sufficient punishment for the two blows he had admitted having struck the deceased.

The Court of Foujdaree Udalt (present T. A. Oakes and H. Dickinson) convicted the 1st prisoner of Manslaughter and sentenced him to seven years' imprisonment with hard labor in irons, and convicting the 2nd prisoner of an Assault sentenced him to imprisonment with hard labor in irons for one year.

The Court of Foujdaree Udalt over-ruled the order issued by the Judge of Circuit for the commitment of the 1st witness "Dulla" for perjury, it appearing to the Court that her examination on the trial was opposed to the latter part of the Circular Order of the 4th March 1830, which declares that where other sufficient evidence exists, it would be obviously very objectionable to make use

of the testimony of parties thus* situated, and that moreover the witness in question was not altogether clear of suspicion of improper intimacy with the deceased, on which account it was objectionable to make her a witness.

The Court further observed that the Circular Order of the 31st January 1811 was opposed in principle to trying for perjury a witness, called under such circumstances as this woman was, to give evidence against her husband.

GOVERNMENT,

Versus

VENKATACHALAM.

Charge—*Murder.*

19th September, 1839.
Venkatachalam's case.

The prisoner was tried at Chittoor at the 3rd Quarter Session of the Court of Circuit for

19th September, 1839.
Vencatachalam's case.

The prisoner was convicted by the Court of Foujdaree Udalt of having been accessory to the administration of a poisonous drug to a peon, in whose custody he was working as a convict, and was sentenced to fourteen years' imprisonment, there being no proof of an intent to kill.

1839, charged with having, in the month of April 1834, when in confinement as a prisoner, murdered a peon named Viradu, and with having effected his escape from custody.

The peon in question on the day he met with his death, had been sent out from the Jail at Arcot in charge of three prisoners, of whom the prisoner was one, to work, and was found in the evening lying dead in the river, the three convicts under his charge having effected their escape.

Nearly five years elapsed before the apprehension of any of the three convicts who had escaped; but in February 1839 information was received by the Police, which led to the capture in the Salem District of the prisoner, who immediately on his apprehension admitted his identity with the escaped convict Vencatachalam, and stated, that he had been enabled to effect his escape owing to one of the convicts with him having administered to the deceased peon certain drugs, called Datura and Bang mixed in Sherbet, which produced stupefaction.

Before the Criminal Court, and also before the Court of Circuit, the prisoner admitted his "escape from custody," but pleaded not guilty to the charge of murder.

The admission of the prisoner when apprehended, that stupifying drugs had been administered to the deceased, coupled with the appearance of the corpse, as deposed to by the witnesses by whom it was inspected, was considered by the Judge on Circuit (M. Lewin) to afford strong presumptive proof, that the death of the deceased was caused by the use of Datura, and that the prisoner was "a party to the use of the poisonous drug" in question, "as a means of effecting his escape, whereby he did effect his escape;" for the first of which offences he recommended, that the prisoner should be sentenced to transportation for life.

The Court of Foujdaree Udalt (present T. A. Oakes, and A. D. Campbell) convicted the prisoner of having been accessory to the administration to the deceased of a poisonous drug, but considering, that, as there was no proof of an intent to kill, a sentence of fourteen years' imprisonment with hard labor in irons would be sufficient to meet the demands of justice, issued their warrant for the imprisonment of the prisoner for that period.

PALLYIL PANGUNNI NAIR,

Versus

1. PALLYIL ITTIRARICHA MENON,
2. PALLYIL MUCHIKAL GOVINNAN NAIR,
3. VELUTTEDAN KUTTIPPERU.

Charge—*Murder.*

• 23rd October, 1839.

The case of Pallyil Ittiraricha Menon and others.

The provisions of Act XIX. of 1837 have reference solely to the evidence of persons convicted of offences, and not to "supposed accessories," in regard to whom the provisions of Section XX. Regulation VIII. of 1802 are still in force.

To entitle the evidence of an accomplice to credit, confirmation is required upon some point affecting the person of the prisoner or prisoners charged.

The prisoners were charged at the 2nd. Session of the Court of Circuit for 1839 holden at Calicut with the murder of the prosecutor's nephew Kclu Nair.

The 1st and 2nd prisoners were near relatives of the deceased, with whom it was proved that they had been at enmity, in consequence of several petty thefts, which he was suspected of having committed in their houses.

It appeared from the evidence that the murder was committed in an unfinished house, to which the deceased was decoyed by the 3rd prisoner, and was there murdered by the 1st and 2nd prisoners with a hatchet, in the presence of the 1st witness, a dependant of the 2nd prisoner, who had accompanied the latter to the spot.

The body of the deceased was discovered on the following morning by the owner of the house, with several wounds on the head and neck; and the villagers having been assembled, and an inquiry set on foot, suspicion was in the first instance directed to the 3rd prisoner, in consequence of his having been seen by the prosecutor on the preceding evening in conversation with the deceased. He was accordingly sent for by the Tahsildar, when he confessed that he had been induced by the 1st prisoner, under a promise of receiving four Rupees, to decoy the deceased to the house in which the body was found, and in which he stated that the murder was committed by the 1st and 2nd prisoners in the presence of himself and of the 1st witness, who, he alleged, had assisted in the commission of the murder by holding the legs of the deceased.

The 1st and 2nd prisoners, when first sent for by the Adlikary with the other villagers to inspect the corpse, stated their inability

23rd October, 1839.
The case of Pallyil It-
tiraricha Menon and
others.

ty to recognize it, but subsequently signed a report, which was forwarded to the Tahsildar, reporting the discovery of the corpse and the name of the deceased.

When criminated by the 3rd prisoner, the 1st and 2nd prisoners denied any knowledge of the murder.

The prisoners having been forwarded to the Criminal Court, where the 3rd prisoner corroborated his Police confession, were committed to take their trial before the Court of Circuit for the murder of the deceased.

The Presiding Judge (T. E. J. Boileau), however, on a perusal of the record, considering the investigation of the case to have been too imperfect to enable him to enter upon the trial, and observing that the 1st witness standing in the light of a principal in the second degree, his testimony could not be admitted, directed that he should be remanded to the Magistrate with a view to his commitment as a prisoner, as being implicated in the charge, and that a further investigation of the case should be held, in order to obtaining further evidence against the 1st and 2nd prisoners.

These orders resulted in the commitment at the following Session of the 3rd prisoner and the 1st witness (no further evidence having been elicited against the 1st and 2nd prisoners), when the Judge then presiding (J. Vaughan), differing from the former Judge in regard to the inadmissibility of the evidence of the 1st witness, directed the immediate confinement of the 1st and 2nd prisoners, originally committed, with a view to their eventual re-commitment, and referred the matter for the orders of the Court of Foujdaree Udalt with a recommendation that the evidence of the 1st witness, then in confinement as a prisoner, should be admitted, and observing at the conclusion of his letter, that "even if the 1st witness had been guilty of more than a misprision of felony, I would submit, with reference to cases in Starkie's Law of evidence as to accomplices, and Act XIX. of 1837 that it was an error to declare that 'his testimony cannot be admitted.'"

In reply to this reference the Court remarked that Act No. XIX. of 1837 had not superseded the provisions of Section XX. Regulation VIII. of 1802; that the Act in question, a Law of an extraordinary nature passed with reference to the proceedings for the suppression of Thuggee, related to persons who might have

23rd October, 1839.
The case of Pallyll It-
tiraricha Menon and
others.

been convicted of crimes, and rendered them competent witnesses, and that under its provisions the Court presumed, that a convict under sentence might be made a witness against persons charged with having taken part in the commission of the crime, of which such convict had been found guilty.

The Court next proceeded to observe, that Section XX. Regulation VIII. of 1802 referred to "supposed accessaries," and provided a course of proceeding for their being made witnesses, and that it appeared to the Court, that there was enough against C. Tēgnatu Unni Puravan, who was the 1st witness in No. 2 of the former Calendar, and 2nd prisoner in No. 3 of that then under notice, to warrant his being regarded as a "supposed accessory"—that it was difficult to understand, on any other supposition, the 2nd prisoner's Case (No. 2 of the Calendar 1st Session 1839,) calling and taking this man along with him to the scene of the murder, as stated by him in his examination, first as a witness, and afterwards as a prisoner; as, if he had not been consenting to the deed, for the perpetration of which the 2nd prisoner was stated to have been going, to take him along with him, was gratuitously to provide an eye-witness for his own conviction of the murder.

Regarding him therefore as implicated, the Court of Foujdaree Udalt authorized the Presiding Judge to admit him to a conditional pardon in the prescribed manner, without which preliminary the Court observed, that his evidence as a witness in the case was inadmissible under the Regulations in force.

The individual in question was accordingly admitted as an approver, and was examined as 1st witness before the Court of Circuit, when he adhered to his previous statements, denying that he had in any way participated in the commission of the murder, or that he was aware of the 2nd prisoner's purpose when he accompanied him to the spot, or that he knew who the murdered man was, until told his name by the 2nd prisoner, when they were leaving the place.

The evidence of this witness was corroborated by the discovery of cuts in the floor of the room at the spot at which the body of the deceased was found, of a hatchet in the house of the 1st prisoner (which was proved to have been sharpened a few days before) with a bloody mark on the handle, and corresponding in size with the

23rd October, 1839.
The case of Pallyil It-
tiraricha Menon and
others.

cuts on the person of the deceased and on the floor of the house above referred to, and of an umbrella in the possession of the 2nd prisoner, with a red mark upon it, supposed to be of blood, which article the witness deposed was taken by the 1st prisoner to the scene of the murder, and was laid down by him in the veranda of the house while the deed was being committed.

To this was added the confession of the 3rd prisoner before the Police and the Criminal Court, which, though not available against the other prisoners, completed the evidence against himself, and suspicious conduct on the part of the 1st and 2nd prisoners, in denying recognition of the corpse of their own relative, in their attempt and failure to prove alibis, and in their setting up before the Circuit Court a defence entirely differing from that originally advanced by them, coupled with an admission made by the 1st prisoner, that the 3rd prisoner had proposed to him to compass the death of the deceased.

In referring the trial for the final judgment of the Foujdaree Udalut, the Presiding Judge stated his opinion, that with reference to what was laid down in the 2nd edition of Starkie's Law of Evidence under the head of "Accomplices," and particularly to the notes in pages 12 to 15, proof against all the prisoners was established by the evidence of the 1st witness, who had invariably given the same account, as witness in the 1st instance, as a prisoner after the 3rd Judge on Circuit had rejected his evidence, and again as an approver, admitted under the orders of the Foujdaree Udalut; and after adverting to the several circumstances of corroboration above noticed, he recommended that the 1st and 2nd prisoners should be sentenced to suffer death, and that the 3rd prisoner, in whose favor the ties of caste and his connexion with the other prisoners were advanced as extenuating circumstances, should be transported for life.

With reference to the observations contained in the Court's proceedings directing the offer of a conditional pardon to the 1st witness, at that time under commitment as a prisoner, the Presiding Judge urged a reconsideration "of the view therein taken, Act XIX. of 1837 being one for the whole territories of the East India Company and expressly declaring that the rule laid down in it ap-

23rd October, 1839.
The case of Pallyll It-
tharicha Menon and
others.

plied to "any stage of any cause civil or criminal," and not merely to "cases of Thuggee."

"Though," observed the Presiding Judge, "Section XX. Regulation VIII. of 1802 refers to supposed accessaries, I see nothing therein prohibitory of using the evidence of declared accessaries. It merely allows the offer of a pardon to those supposed to be accessaries. The person admitted as an approver merely declared himself guilty of a misprision of felony in not having informed of what he saw; and this, it would appear from Starkie, would not vitiate his evidence according to English Law."

The Court of Foudaree Udalut (present T. A. Oakes, W. Hudleston and A. D. Campbell,) concurred with the Presiding Judge in the conviction of all the prisoners of the murder laid to their charge, and approving of that Officer's recommendation in regard to the punishments to be awarded, sentenced the 1st and 2nd prisoners to be hanged, and the 3rd prisoner to transportation for life.

In communicating their sentence the Court of Foudaree Udalut observed, that the record of trial ought to have shown the offer of a conditional pardon to the 1st witness, and recorded the following remarks on the Law regarding the evidence of accomplices and on the question raised in the letter of reference by the Presiding Judge.

"The passage in Starkie's law of evidence referred to by Mr. Vaughan, shows that much diversity of practice has prevailed in respect to the nature of the confirmation of an accomplice's evidence, requisite in order to the conviction of the accused."

"The latest authority on this subject is the 8th Edition of Phillips, published in 1838, with additions by Messrs. S. M. Phillips and A. Amos, and by this it is shown that the recent practice has been, in exercising the discretion of the Court 'as to the evidence that ought to be adduced in order to entitle an accomplice to 'credit,' to 'require a confirmation upon some point affecting the person of the prisoner charged: and that when several prisoners are jointly tried, confirmation is to be required as to all of them, before all can safely be convicted.'"

23rd October, 1839.

The case of Pallyil It-
tiraricha Menon and
others.

"It is also pointed out that the 'distinction between confirmation as to the manner, in which an offence was committed, and as to the parties, by whom it was committed, is of obvious importance: and although cases may sometimes arise in which, from the confirmation of an accomplice as to the circumstances attending the commission of the crime, a jury may be led to conclude, that the accomplice speaks the truth with regard to the person charged; still, as the two points are in general essentially different, great caution is to be used in drawing such conclusion. If the witness has really been an accomplice, as he states himself to be, he must be acquainted with the manner in which the offence was committed: and in describing the manner, it would not in general be the interest or the desire of an accomplice to swear falsely. But, with respect to persons concerned, there may be strong reasons to infer the existence of motives, which would induce an accomplice to fabricate or pervert some facts against a party charged, notwithstanding that other facts related by him may be indisputably true, or even notwithstanding the general consistency of his story may be clearly established."

"The rule that a 'legal' conviction may take place on the unsupported testimony of an accomplice may be said to be only not abrogated, in express terms; because it is, in *all* such cases, the practice of Judges in England to advise the Jury 'not to give credit to the accomplice.'"

Phillips' 8th Edition, Vol. 1, p. 37.

"In this case it appears to the Court of Foujdaree Udaltut that the evidence of the 1st witness is confirmed, both as to the manner in which the offence was committed, and as to the parties by whom it was committed. As to the first point by the state of the corpse, and of the floor, that of the latter showing that blows were struck in the dark which missed the deceased and hit the floor; by the size of the wounds corresponding with that of the 1st prisoner's hatchet, and by the place where the body was found: and as to the second point by the 3rd prisoner's confession, and the other circumstances detailed in Mr. Vaughan's letter of reference."

"The tale told by the 1st and 2nd prisoners on their defence was evidently invented after their examination in the Criminal Court:

23rd October, 1839.
The case of Pallyil It-
tirariche Menon and
others.

and their attempting to prove an alibi by persons who could depose to nothing of the kind, is greatly against them."

"Upon the whole the Court of Foujdaree Udalut concur with the 1st Judge On Circuit in the conviction of the prisoners, and determine to pass on them the sentences recommended by Mr. Vaughan."

"The Court do not think that Mr. Vaughan's remarks in para. 5 of the letter of reference sufficiently account for the 1st witness having been taken to the scene of the murder, and they still think, that there were prima facie grounds for regarding the said witness as a party concerned, as stated in this Court's proceedings of the 12th ultimo. His statement, may, as Mr. Vaughan observes, be true as to his not having been informed of the intention to murder, but all that the Regulation requires is, that the party be supposed to be an accessory or accomplice."

"There is, in the opinion of the Court, nothing in the record to show that this man was not stationed, where he stood, 'to prevent surprise,' which according to the law of England would make him a principal in the second degree."

"Moreover all that is required by Section XX. Regulation VIII. of 1802 is, that there shall be reason to *suppose* the party to be an accessory. The Court consider that there existed abundant reason for this *supposition*: nor do they see that the absolute subserviency of the 1st witness to the 2nd prisoner weakens the *supposition*, but the contrary: finally, that which may appear after the trial is not before this Court, when considering applications under the said Section."

"From para. 9 of the letter of reference it would appear that Mr. Vaughan has misunderstood para. 1 of this Court's proceedings of the 12th ultimo, where it is not stated, that the Act No. XIX. of 1837 applies only "to cases of Thuggee," but a fact, established by the records of this Court, is noticed, viz. that the said Act was 'passed with reference to the proceedings for the suppression of 'Thuggee.'"

"The general application of the provisions of this act is sufficiently indicated by its terms."

"But it respects solely the evidence of persons, who have been

23rd October, 1839.
The case of Pallyll It-
tiraricha Menon and
others.

convicted of offences: it does not modify the provisions previously enacted regarding the mode of obtaining the evidence of supposed accessaries."

" With reference to para. 10 of the letter of reference it is to be observed, that Section XX. Regulation VIII. of 1802 has always been applied to " declared accessaries :"—this is shown by the terms of the Circular Order of 3rd April 1828, and under the provisions of the general Regulations there is no way of rendering the evidence of an unconvicted accessory available against the principals in a crime, but by a recourse to the provisions of Section XX. Regulation VIII. of 1802 :—the lower Courts are bound to bring all offenders to trial, and to the Foujdaree Udalt is reserved the power of directing the examination of an accused party, as a witness against others concerned with him. The Magistrates and Criminal Judges are forbidden to swear a prisoner to his confession, and his confession, with proof of the commission of the crime confessed, suffices for his conviction."

SYED JALALUDDIN,

Versus

1. CHINNATAMBU,

2. MUDDUSAMI.

Charge—*Administering Intoxicating Drugs with intent to rob.*

25th October, 1839.
The case of Chinnatambu and another.

The prisoners convicted of administering intoxicating drugs with intent to rob were sentenced to transportation for life; the affinity of the offence in its nature to the crime of Thuggee, and its prevalence at the time being taken into consideration.

The prisoners were tried at Chittoor upon an indictment charging them with having administered to the prosecutor certain intoxicating drugs in beaten rice, with intent to rob him.

The prosecutor was travelling to Nagpoor, when he met the prisoners on the road in the Zemindary of Calastry, who persuaded him to accompany them on his journey, and, after they had gone some distance together, induced him to eat some beaten rice; on eating which,

25th October, 1839.
The case of Chinnatambu and another.

finding himself in a state of intoxication, he went to a neighbouring village, and reported the occurrence to the Tanadar, becoming shortly afterwards insensible from the effects of the drugs administered to him.

The prisoners were immediately apprehended and confessed to the Police the act charged against them, criminating each other, and the 2nd prisoner imputing to the 1st (as well as to his family) the habit of committing acts of the nature of that of which they then stood accused, while the 1st admitted that the drugs were administered to enable them to rob the prosecutor of his property.

The Judge of the Court of Quarter Sessions (M. Lewin) considering the evidence fully sufficient to the conviction of the prisoners of the crime laid to their charge, referred the trial to the Foujdaree Udalt, with a recommendation that the prisoners should be sentenced respectively to transportation for life.

The Court of Foujdaree Udalt (present T. A. Oakes and W. Hudleston) concurred in the conviction of the prisoners, and observing that the offence proved was akin to Thuggee, and that the records showed that it was prevalent in different parts of the country, passed the sentence recommended by the Presiding Judge.

GOVINDA BHATLU,

Versus

KANDALI BASAVAPPA.

Charge—*Forgery*.

20th April, 1840.
The case of Kandali Basavappa.

The evidence in this case being held insufficient for the conviction of the prisoner of Forgery, but there appearing sufficient grounds for indicting the prisoner for ut-

The prisoner was charged with forgery in having erased and altered certain words in a document filed by him in a Civil Suit, in which he was a party concerned, and with having made an interpretation therein.

The trial was held at Chittoor before the Judge Presiding at the Court of Quarter Session.

20th April, 1840.

The case of Kandali Bannappa.

tering the forged document, the Court of Foujdaree Udalut directed that he should be placed on his trial for that offence, and issued a Circular Order to the effect that in all cases of forgery, whenever there might appear sufficient grounds for charging the prisoners with also uttering the forged document, knowing it to be forged with intent to defraud, a charge for such uttering should invariably form a second count in the arraignment, ●

The Presiding Judge (W. D. Davis) dissenting from the Futwa of the Mahomedan Law Officer which declared the prisoner to be liable only to Tohmud, or slight suspicion, and considering the evidence to be sufficient to his full conviction of the offence charged, referred the trial for the final judgment of the Court of Foujdaree Udalut with a recommendation that the prisoner should be sentenced to four years' imprisonment with hard labor in irons.

The Court of Foujdaree Udalut (present J. Bird and A. D. Campbell,) considered the evidence altogether insufficient to convict the prisoner of the commission of the forgery laid to his charge, but being of opinion that there were sufficient grounds for indicting the prisoner for having uttered the forged document in question, they directed the Circuit Judge to issue the necessary orders for placing him upon his trial for that offence.

A Circular Order was likewise promulgated, to the effect that in all cases of forgery, whenever from the evidence and the circumstances of the case there are grounds to charge the prisoner with also uttering the forged document, knowing it to be forged, with intent to defraud, a charge for such uttering should invariably form a second count in the arraignment, distinct from that of fraudulently fabricating the instrument, and in each count the words "with intent to defraud A. B." (here enter the name of the party intended to be injured) shall be added. If the uttering consists in having filed the document in Court, the number of the suit or appeal should be specified: and if filed by a Vakeel, the prisoner should be charged with having uttered by causing the Vakeel to file it with intent, &c.

GOVERNMENT,

Versus

1. BANDUDA,
2. LUKAJENNA,
3. GUNDIJENNA,
4. GOVIND SABUDI,
5. LUKA SOWEIN,
6. BABAN SANTRA:

Charge—*Murder by Thuggee.*

16th July, 1840.

The case of Banduda and others.

The provisions of Section XVII. Regulation VIII. of 1802 held to be applicable to accessaries as well as to accomplices; and the 1st, 2nd, and 5th prisoners in this case, convicted as accessaries, both before and after the fact, to the commission of the crime of Thuggee, as well as the 3rd, 4th, and 6th prisoners who were convicted as principals, were sentenced to suffer death.

It is required by C. O. 16th May 1822, that all articles of stolen property produced in a trial should be numbered, that the witnesses by whom such property may have been discovered should be invariably examined as to the particular articles found on each individual prisoner, and that throughout the examination before the Magistrate, Criminal Judge and Court of Circuit, the number of every article referred to be specified.

The omission of the Assistant General Superintendent for the suppression of Thuggee to conform to the

The prisoners were tried before the Agent to the Governor of Fort St. George at Ganjam upon an indictment, charging them in the first count, with having in a certain day in the month of August 1839, at a place situated about a mile and a half to the north of the village of Humma, strangled, in the manner practised by Thugs, two persons named Govinda Naik and Potila Naik, and with having robbed them of property valued at Rupees 124-10-1; and in the second count, with having belonged to a gang of Thugs.

The prisoners together with six other individuals were apprehended at Kanchellagundam by a Moonshee employed under Captain Vallancey, Assistant General Superintendent for the suppression of Thuggee, upon suspicion, in consequence of their appearance coinciding with the description of people the Assistant General Superintendent was in search of, known to him to practise Thuggee, and were detained in custody pending the arrival of Captain Vallancey at Kanchellagundam.

The persons apprehended, eight of whom were travelling under the guise of Brahmins, four of them passing themselves off as Gowdas, having described themselves to be inhabitants of cer-

16th July, 1840.
The case of Banduda and
others.

foregoing Circular Order
noticed in this
case.

A Thug should in no
instance be brought
to trial under Act
XXX. of 1836, while
liable to be indicted
for murder.

tain villages in the District of Pooree, information of their detention was forwarded to the Magistrate of that District, who shortly afterwards joined Captain Vallancey at Kanchella-gundam, and formed the impression from a personal examination of the prisoners, that their alleged characters, names and places of residence were false, and on his return to his District ascertained, that a class of people of the Gol-

la caste, residing in certain villages within his jurisdiction, were in the habit of periodically leaving their homes for four or five months at a time, and returning laden with property of various descriptions, and that at that time ten of these people were absent, and that two persons who had left their homes with the above ten, were just returned. Information having been meantime received by him that two of the party of twelve, apprehended at Kanchella-gundam, had made their escape, the Magistrate caused the re-apprehension of the two persons in question (the 1st and 2nd prisoners in the case) and sent them to the Assistant General Superintendent, together with a person named Patbass Patnaik, the Sarbarrakar of the villages referred to, who recognized the ten prisoners under that Officer's custody as the absent Gollas; the two persons re-apprehended by the Magistrate of Pooree being identified before the head of Police of Sumpett by three individuals, as the persons who had effected their escape from Kanchellagundam.

The falsity of their assumed characters having been thus established, and the whole party having been continued in confinement, disclosures were shortly afterwards made by four of the prisoners who were admitted as approvers, which led to the commitment of the six prisoners in this case for trial for the crimes laid to their charge; the Sirdar of the Gang and another prisoner having de-mised previous to the commitment of the case.

It appeared from the evidence of the approvers that about the latter part of the month of August 1839 the gang, consisting of the twelve persons already mentioned, left their villages, under the guidance of one of their party named Cherrun Sowein, proceeded to the shore of the Chilka Lake, and taking a boat at Balnassi, crossed the lake to Manikpattam, on their arrival at which place eight of the party had assumed the character of Brahmins and the

16th July, 1840.
The case of Banduda and
others.

other four that of Gowdas as servants to the Brahmins, with names to correspond, and having the better to disguise their real characters, and to bear out those they had assumed, provided themselves with a quantity of the consecrated sweetmeat from Jaganath termed Mahaprasad.

Leaving Manikpattam by land, they proceeded to Kattamatti, on the road to which place they fell in with two Hindoo travellers, whom they persuaded to accompany them, and crossing the ferry with them at Kattamatti, murdered them on the opposite side of the lake in the usual Thug manner, while the unsuspecting travellers were conversing with them. After having murdered them, they buried the bodies in the sand and transferred the property found on them to their own bags.

The remains of the bodies were subsequently discovered at the spot named by the approvers, by the Magistrate of Pooree.

Travelling onwards the gang the next day fell in with another party of three travellers returning to their homes in the Ganjam District, whom they prevailed upon to pass the night in their company, and murdering them during the night, buried the bodies in the sand not far from Nabba, where their remains were subsequently found by the Magistrate of Pooree.

A few days afterwards the gang divided at the village of Bilparah into two parties of six each. One party headed by the Sirdar proceeded the other, and proceeded to the village of Humma in the Ganjam District, where they met with two Ooriya Brass merchants, residents of the District of Pooree, returning to their homes, whom the Thugs joined, and accompanying them on the road to Khumba, found their opportunity at a small tank on the road side, where they murdered them in the broad day, and without delay disposing of the bodies in the tank, returned to Humma with their booty and were joined by the remainder of their gang, seven of whom repaired at night to the scene of the murder, took the bodies out of the tank, buried them, and returned to Humma.

These bodies were exhumed in the presence of Captain Vallancey, and the booty thus obtained, found upon the persons of the Thugs when they were apprehended, was identified by the relatives of the murdered merchants, whose murder formed the charge laid in the first count of the indictment.

16th July, 1840.
The case of Banduda and
others.

From Humma the united gang continued their route by Ganjam and Chattarpur for Barhampur, but on the road between the two latter places, they fell in with a Brahmin and his attendant, at Naidopett, whom they murdered as they walked along with them; seven of the gang remaining near the spot till night fall, when they buried the bodies, which they had meanwhile secreted in the jungles, and transferred the property to their bags.

These bodies were likewise exhumed in the presence of Captain Vallancey, and certain property stated by the approvers to have been taken from the Brahmin, was subsequently identified by the Record-keeper of the Agent's Court, as having belonged to his father, who, shortly before the time the murder was stated to have been committed, had quitted Chattarpur with a cooly for the purpose of proceeding to the Rajahmundry Zillah, but had never since been heard of; a period of seven months having elapsed from the date of his departure from Chattarpur, when the recognition by his son of the property taken from him took place.

After the murder of the Brahmin and his servant, the Thugs, who had separated for the burial of the bodies, again re-united at the village of Konda, south of Barhampur, when the property obtained at the last murder was distributed amongst the party, and amongst other articles, a large red silk, called Saree, which was torn into six pieces, and carefully concealed in the linings of their bags, and was found upon the persons of six of the party when they were apprehended, and with two other articles, was subsequently identified by the son of the murdered man.

At Konda the gang again separated into two parties of six each, one under the Sirdar proceeding to Itchapur, and the other remaining for two days at the village of Golantra, where they murdered a single traveller and buried his body near an old Pagoda, where it was subsequently disinterred in the presence of Captain Vallancey.

Before reaching Itchapur the gang re-united and proceeded by Itchapur to Kanchellagundam and thence to Hurripur, between which places they murdered six travellers who joined them on the road, and whose bodies were afterwards discovered by the Head of Police of Sumpett.

16th July, 1840.
The case of Banduda and
others.

Immediately after the commission of this murder the Thugs went on to Hurripur, where they passed the night, having the property of the murdered travellers in their possession.

. On the following day they concluded their operations by the murder of a single traveller on the road between Hurripur and Makarajola, and after proceeding a little further south, retraced their steps to Kanchellagundam, where their apprehension took place.

. The evidence in support of the first count of the indictment consisted of the confessions of the four approvers, which were perfectly consistent in all the material points ; corroborated by the testimony of the boatmen who conveyed the gang across the Chilka Lake in their boat ; by that of the Head-man of Makarajola and of another inhabitant of that village, who saw the gang when they halted there, and identified certain of its members ; by the depositions of the persons present at the apprehension of the entire gang at Kanchellagundam, who swore to the property found in their possession ; by evidence that the whole band set out in company together from their villages at a certain time anterior to the murder, and that with the exception of two of the prisoners who were soon afterwards re-apprehended, none of the gang had returned to their homes ; by evidence to prove the journey of Govinda Naik and Potila Naik, the Brass Merchants, to Barhampur, and that on their return homewards they had arrived at and again set out from Ganjam on a certain date and had never reached their homes ; by the identification of certain articles found upon the gang, when they were apprehended, as the property of the said Govinda Naik and Potila Naik ; and lastly, by the testimony of witnesses to the disinterment of two human bodies from a pit pointed out by one of the approvers, in the situation indicated in his previous deposition, as that in which the corpses of the two Brass Merchants had been buried.

In support of the second count of the indictment charging the prisoners under the provisions of Act. XXX. of 1836 with having belonged to a gang of Thugs, there was the evidence of two of the approvers that the prisoners were hereditary Thugs and that they (the approvers) had been engaged in Thuggee expeditions in conjunction with them ; which was corroborated by the testimony of inhabitants of their villages, to the effect that the prisoners had been

16th July, 1840.
The case of Banduda and
others.

in the habit of being periodically absent from their homes on distant journeys without any ostensible object.

It appeared from the evidence of the approvers that the actual perpetrators of the murder charged in the indictment were the 3rd, 4th, and 6th prisoners, the 2nd approver and the deceased Sirdar Cherrun Sowain; the 4th prisoner having strangled the elder of the Brass Merchants, while the 6th prisoner and the 2nd approver assisted by holding his hands and legs; and the 3rd prisoner having strangled the younger with the assistance of Cherrun Sowain.

The prisoners pleaded not guilty and all adopted the same line of defence. The 1st and 2nd prisoners stated, that they had set out from their villages in company together in the month of Shravanam (corresponding with August) with the intention of purchasing cloths and also for the purpose of collecting money by the distribution of the Mahaprasad; that they accordingly proceeded by way of Ganjam, Barhampur, Itchapur, Kanchellagundam and Purla Kimeddy to Jeypur, where by distributing the Mahaprasad they collected fifteen Rupees; that upon their arrival at Kanchellagundam in the course of their journey homewards they were seized by Captain Vallancey's Moonshee, who took their property from them, and that fearing further ill-treatment they effected their escape, but soon after returning to their homes, were re-apprehended by the Magistrate of Pooree, who forwarded them under a guard to the Assistant General Superintendent at Vizagapatam. They declared that they were not in company with the other prisoners, when they were seized at Kanchellagundam; and the 2nd prisoner pointedly denied that a pair of silver armlets, which were stated to have been discovered in his possession, had been so discovered.

The 3rd and 5th prisoners made a similar statement, to the effect that they had proceeded by the same route to within one stage of Jeypur, distributing the Mahaprasad, by which they obtained between five and six Rupees each, and that on their way back they were apprehended by the Moonshee, who took their cloths and different articles from them. They likewise denied that they were in company with the other prisoners when they were apprehended.

The defence of the 4th and 6th prisoners was to a similar effect; the 4th alleging, that he was travelling with Goper Sowain, (one of the two persons apprehended by the Moonshee, who had died pre-

16th July, 1840.
The case of Banduda and
others.

vious to the trial,) when he was apprehended, and the 6th, that he was travelling alone, when his apprehension took place.

Four witnesses were called by the 1st, 2nd, and 4th prisoners in their defence, who deposed that they, the said prisoners, each possessed one or two pairs of bullocks and carried on cultivation as a means of livelihood, but admitted that they had been in the habit of being absent from their homes periodically without any ostensible object.

The Agent (R. A. Bannerman) considered the evidence sufficient to the conviction of all the prisoners upon both counts of the indictment, and submitted the record for the final judgment of the Foujdaree Udalt, with a recommendation that the 3rd, 4th, and 6th prisoners, who were proved to have been principals actively engaged in the commission of the murder charged, should be sentenced to suffer death.

By the Court of Foujdaree Udalt—A. D. Campbell, 2nd Judge.

"This is a highly important trial."

"With reference to past proceedings of this Court, I wish the attention of the Assistant General Superintendent of Thuggee (Captain Vallancey), but more especially of the Native Officers under him, to be drawn to the Circular Order respecting the numbering of each article found on each prisoner: for here is a mass of property, found upon twelve persons, some approvers, some prisoners; and a vast deal of the evidence, respecting it, has become quite *useless* from want of attention to the said Circular Orders, chiefly on the part of Captain Vallancey and those under him."

"I also wish to know whether the approvers in this trial have been tried and convicted, under the general orders issued to that effect. If not, I would peremptorily order that that no approvers be brought forward as witnesses, until the orders of the Supreme Government for their conviction have first been obeyed; for their evidence may otherwise be influenced by hopes, which they never ought to entertain."

"I also think that the Assistant Superintendent of Thuggee should be forbidden to bring to trial any one for the *minor* crime provided in Act XXX. of 1836, when the major crime of *murder* by Thuggee itself is hanging over them. I make this remark particularly with reference to the charge in this case, in the 2nd

16th July, 1840.
The case of Banduda and
others.

“count, against the 1st, 2nd and 5th prisoners,
“and the evidence forthcoming in this case that
“the 5th prisoner is specially implicated in
“another case of murder, and also in reference to the 25th para. of
“Captain Vallancey’s letter to the Agent at the beginning of this
“trial, in which he adverts to other charges of murder against each
“of these three prisoners.”

“In other respects I think Captain Vallancey deserves credit for
“the exertion made to bring orward all possible evidence in this
“case, and that Mr. Bannerman is also deserving of commendation
“for his conduct of it.”

“As to the case itself, I am of opinion that the whole of the six
“prisoners are convicted of *murder by Thuggee*. It is proved that
“they all belonged to the same gang, had one unlawful combination
“against life, and acted in concert with each other. It is true that
“the 3rd, 4th and 6th prisoners alone were actively engaged, in the
“destruction of the two individuals in question ; and I therefore
“would hang each of them in chains, at such distant places as the
“Agent may select, as the most likely to strike terror amongst others
“pursuing this lamentable profession, which is shown to be preva-
“lent in the neighbourhood. But I think that the 1st, 2nd and 5th
“prisoners, who were part of the same gang, the two former disguis-
“ing themselves to facilitate their profession, and the latter appro-
“priating to himself the two silver bracelets of one of the deceased,
“are, as accessaries, also deserving of sentence of death itself ; and
“I would sentence each accordingly in the usual manner.”

H. Dickinson, 3rd Judge.

“The 3rd, 4th and 6th prisoners are clearly convicted as princi-
“pals in this murder, and the 1st, 2nd and 5th prisoners as accessa-
“ries both before and after the fact ; in the first instance, in know-
“ing that the 3rd, 4th and 6th prisoners were proceeding with the
“express intention of committing murder ; and in the second in
“knowing that they had actually murdered two men, with which
“murders they identified themselves by assisting in the removal of
“the bodies from the tank in which they had been secreted, by
“carrying the bodies into the jungle and there burying them, and
“by receiving shares of the property which had belonged to the per-
“sons murdered.”

“It is laid down in Blackstone, Vol. 4, p. 38, ‘the general rule

16th July, 1840.
The case of Banduda and
others.

“ of the ancient Law is this, that the accessaries shall suffer the same punishment as their principals.”

“ I consider all of the prisoners to be equally deserving of death, but I am not quite sure that our Code would bear us out in sentencing the 1st, 2nd, and 5th prisoners to that punishment.”

“ It is provided by Section XVII. Regulation VIII. of 1802, that the Foujdaree Udalt may, in a case of murder, sentence an accomplice to suffer death, though not the principal perpetrator of the murder; but no power of the sort is granted in cases of accessaries.”

“ Previously, therefore, to recording judgment in the case, I would beg the 2nd Judge to inform me whether his superior experience in the practice of the Court enables him to point out precedents, in which the Court have sentenced accessaries to suffer death with their principals.”

In reply to the foregoing Minute, Mr. Campbell referred Mr. Dickinson to a minute recorded by the late 2nd Judge of the Court (W. Hudleston), on Case No. 8 of the Vizagapatam Calendar, 1st Session of 1839, to which Mr. Dickinson replied.

II. Dickinson, 3rd Judge.—“ The quotation made by the late 2nd Judge of the Court in his minute on trial No. 8, of the Vizagapatam Calendar, 1st Session of 1839, from ‘ Russell on Crimes ’ to the effect that the appellation ‘ accomplices ’ ‘ includes all the participes criminis, whether they are considered in strict legal propriety as principals in the first or second degree, or merely accessaries before or after the fact, ’ satisfactorily convinces me that the latter part of Section XVII. Regulation VIII. of 1802 is applicable to the 1st, 2nd, and 5th prisoners in this case.”

“ I therefore readily join the 2nd Judge in sentencing the whole of the prisoners to suffer death, and I would moreover direct that they should all be gibbeted.”

“ Unless the orders of the Supreme Government, referred to by the 2nd Judge in the second para. of his minute, prescribe that an approver shall not be allowed to give evidence, until he shall himself have been tried, I doubt the expediency of issuing the order proposed. So long as an approver is not tried, it is likely that he will exert himself to the utmost to detect Thugs; but

16th July, 1840.
The case of Banduda and
others.

" this zeal must cease when he shall have been
" tried, and sentence passed upon him."

" I quite agree that a Thug should on no ac-
" count be brought to trial under Act XXX. of 1836, while he is
" liable to be indicted for murder."

" This trial is admirably got up both as respects Captain Vallan-
" cey and Mr. Bannerman, and I think that both of these Officers
" are entitled to the commendation of the Court for the same."

A warrant was accordingly issued for the execution of all the
prisoners and for the suspension of their bodics in chains at the
place of execution, and the following proceedings were recorded by
the Court of Foujdaree Udalut.

" Admirably as this case has been got up and conducted through-
" out, it is with regret that the Court find it necessary to comment
" on a defect in it."

" It is required by the Circular Order of the Foujdaree Udalut of
" the 16th May, 1822, that all articles of stolen property, which may
" be produced in a trial, should be numbered ; that the witnesses by
" whom the property may have been discovered be invariably ex-
" amined as to the particular articles found on each individual pri-
" soner ; and that throughout the examinations before the Magis-
" trate, &c., the number of any article referred to be specified."

" In the proceedings before the Assistant General Superinten-
" dent in the present case, the above standing order was complete-
" ly lost sight of, the consequence of which was, that much evidence,
" which, had the rule been observed, would have been highly valua-
" ble, was rendered comparatively useless."

" The Court accordingly resolve to direct that the attention of
" Captain Vallancey be now drawn to the Circular Order in ques-
" tion, with a view to his observing and enjoining on his Native
" subordinates a strict adherence in future to the instructions
" therein laid down."

" Adverting to the 25th para. of Captain Vallancey's letter to
" the Agent, recorded at the commencement of the trial, in which
" he requests that in the event of any of the prisoners not being
" found guilty of the charge of murder, they may be returned to
" his custody and not released as he has other cases of murder
" against each of them, the Court of Foujdaree Udalut are of opini-
" on that a Thug should on no account be brought to trial under

16th July, 1840.

The case of Banduda and
others.

“ Act. XXX. of 1836, as required by the Circular Order No. 95, of the 25th November, 1837, while he is liable to be indicted for murder itself.”

“ In conclusion, the Court of Foudaree Udalut have much pleasure in recording their satisfaction at the zeal and intelligence displayed by Captain Vallancey in tracing and apprehending the prisoners, and the perspicuity and attention evinced by him in collecting and preparing the evidence for the commitment of the prisoners. The Court have also remarked with much satisfaction the patience, talent, and ability displayed by the Governor’s Agent in the conduct of this trial.”

GOVERNMENT,

Versus

1. GANJRA.

2. RIGA.

Charge—Kidnapping and Selling Boys to the Khonds for the purpose of being Sacrificed as Meriahs.

5th July, 1841.

The case of Chakra and
Riga.

The facts of this case, which was tried by the Agent to the Governor of Ganjam (R. A. Ban-nerman), are thus detailed by the Agent in his letter of reference, dated the 26th May, 1841,

which was forwarded with the trial to the Court of Foudaree Udalut.

The prisoners in this case were convicted of kidnapping and selling boys to the Khonds for the purpose of being sacrificed as Meriahs, and were sentenced by the Foudaree Udalut to three years’ imprisonment with hard labor in irons, and to receive the 1st prisoner 195 and the 2nd prisoner 100 lashes.

The corporal punishment was subsequently remitted, owing to a delay which occurred in carrying out the

“ In this case the transaction forming the matter of charge against the prisoners took a place in a part of the Maliahs nominally dependent on Goomsoor, where the authority of the Company’s Government has yet been but very imperfectly established and its laws are altogether unknown, and where no judicial process can be executed. In the present instance, the two prisoners came voluntarily to wait upon the Principal Assistant, while he was in that quarter, in November last, obviously without any expectation that they would

5th July, 1841.

The case of Chakra and
Riga.

sentence, consequent
on a correspondence
with Government.

" be detained to answer to a criminal charge.

" Major Campbell has since used every endea-

" vour to secure the attendance of the two

" Moolikoes or Headmen to whom the lads

" were sold, but without success, and it has

" been impracticable to procure any additional witnesses to estab-

" lish the facts of the case, which will account for the incomplete

" form in which the proceedings came before the Court."

" The only witness forthcoming in support of the charge is one.
" of the lads, whom the prisoners are charged with having kidnâp-
" ped and sold, whose release from the bondage, in which he was
" held by the Khonds of Motanghi, was obtained by Sam Bissoyi
" the chief of Huzzagada. This young man, named Goura, is of
" the Panoc caste, and an inhabitant of a village in the Hill Zemin-
" dary of Nomagada, bordering on the Goomsoor Maliahs, and under
" the jurisdiction of the Commissioner in Cuttack. His statement
" is to the following effect; that the 1st prisoner Chakra having
" quitted Goomsoor had taken up his abode in the village of Ma-
" nikangada, where the witness resides; that in the month of
" Bhadrpada last, corresponding with September 1840, the 1st pri-
" soner invited the witness and his cousin Gonja to accompany
" him to the Maliahs, for the purpose of carrying turmeric, pro-
" mising to give them a quarter rupee each as hire for the trip;
" that they agreed to the proposal, and accordingly accompanied the
" 1st and 2nd prisoners to the Goomsoor Maliahs, and after four
" days' journey arrived at the village of Dandekia in Bodadesh;
" that the 1st prisoner after having had some conversation with
" Bodee Molikoe of that village, delivered over Gonja to him, who
" bound and detained him in his custody; that the witness and
" the 1st and 2nd prisoners then proceeded on in company to-
" gether as far as the village of Motunghee where the 1st prisoner
" had some conversation with Juthee Molikoe of that village, and
" sold the witness to him, who caused the witness to be bound with
" a cord and placed under charge of three or four of his people.
" The witness further states that ' I remained bound in that man-
" ner for the space of a month, after which the cords were remov-
" ed and I remained for more than a month under charge of three
" or four persons who watched over me night and day. In the
" month of August, I heard from the Khonds appointed to watch

5th July 1841.
The case of Chakra and
Riga.

“over me, that Bodee Molikoe had caused my
“cousin Gonja to be sacrificed as a Meriah,
“and the women and children of Juthee Mo-
“likoe used to tell me that I was also destined to be sacrificed
“in the month of February;’ but that in consequence of his being
“kept in strict custody he was unable to make his escape; that
“after a lapse of two months more, some pcons came there, who
“took him to Sam Bissoyi, by whom he was forwarded to the Tah-
“sildar of Goomsoor. The witness adds, that Juthee Molikoe told
“him that he had paid sixteen rupees to the prisoner as his price.”
“No further evidence is available in support of the charge, but
“the statements of the prisoners themselves go far to establish
“their guilt.”

“The 1st prisoner Chakra, also a Panoe by caste, states that at
“the time of the disturbances in Goomsoor he and a number of
“others emigrated to Nomagada Zemindary, where he has since
“been residing; that the 2nd prisoner Riga, his brother-in-law,
“came to see him in the month of Bhadrapada last; that when
“he was about to return with him to the Goomsoor Maliahs for
“the purpose of bringing turmeric, he invited Goura and Gonja
“to accompany them; that he advanced half a rupee to Goura
“and took them both along with him to Bodadesh. He states;
“‘having arrived at the village of Mantungee, Gouvadegaloe of
“that village asked me to give him Goura that he might adopt
“him as a son. I accordingly consented and sold to him the said
“Goura for five rupees, out of which I paid to Riga (the 2nd
“prisoner) four rupees in satisfaction of a debt due to him. Af-
“terwards Bodee Molikoe met us at the village of Dundekra and
“asked me to give him Gonja in order that he might adopt him
“as a son, and I sold to him the said Gonja for the sum of five
“rupees, which he has not yet paid.’ The prisoner further states,
“that subsequently the 2nd prisoner Riga came and stated that
“in consequence of Goura and Gonja having been sold to the
“Khonds, Sam Bissoyi was troubling him much on that account,
“and he accordingly proceeded with him and they presented them-
“selves before Major Campbell.”

“On being asked what right he had to sell and receive money
“as the price of these lads, the prisoner answered that having ad-
“vanced Gonja three rupees as his maintenance, he had a claim

5th July, 1841.
The case of Chakra and
Riga.

“ upon him, and consequently sold him to Bo-
“ dee Molikoe, and he admits that he was cul-
“ pable for also selling Goura to Gouvadega-
“ loc. The prisoner further declares that he was not acquainted
“ with the proclamation made by the Cirkar against the Meriah
“ sacrifices, and that he has never on any former occasion sold
“ any other person.”

“ The 2nd prisoner Riga states that he had gone to Mamaga-
da, for the purpose of receiving a debt of five rupees owing by
the first prisoner, who promised to pay him if he would accompany
him to Bodadesh, and that he accordingly accompanied the pri-
soner Chakra and the lads Goura and Gonia to the village of
Mantungee, where the 1st prisoner delivered Goura to Gouvadega-
loe, at the same time informing him that he had sold him for five
rupees, and that by desire of the 1st prisoner, he accompanied the
brother of Gouvadegaloe to the village of Huzzagada, who then
paid four rupees on account of the 1st prisoner's debt to him.
The prisoner declares that he does not know to whom the 1st pri-
soner sold Gonia; that subsequently Sam Bissoyi caused the pri-
soner to be seized and questioned as to his share in the transac-
tion, to which he answered that he had merely received money
from the 1st prisoner in payment of a debt owing to him; where-
upon he was ordered to bring the 1st prisoner, and that accord-
ingly he went to him, and they both repaired together to Major
Campbell.”

“ Although no judicial evidence to the fact is forthcoming, I fear
there is reason to believe that the lad Gonia has been sacrificed
by the Khonds of Bodadesh. Both the prisoners in this case are
of the Panoe caste and belong to that part of the Maliahs where
the two lads were sold. The Panoes are a distinct race from the
Khonds, but they live among them and are believed to participate
in their superstitious rites. The Panoes weave the coarse cloths
worn by the Khonds, and are the medium of carrying on a petty
traffic in the various Hill products, which they barter for salt and
other articles obtained from the plains. From their occasional in-
tercourse with the people of the neighbouring Zemindaries, the Pa-
noes are usually more intelligent than the Khonds, by whom they
are invariably put forward as spokesmen, on occasions of holding
communication with European Officers.”

5th July, 1841.
The case of Chakra and
Riga.

“It is obvious that the 1st prisoner was perfectly conscious that he acted wrongly in deceiving and selling the two lads in the manner he states, and it is equally clear that the motive by which he was actuated, had no connection with any superstitious feeling; and I consider him deserving of punishment and the 2nd prisoner as an accessory. In my opinion however the provisions of the Regulations are not well adapted to meet a case of the peculiar nature of the present one. To inflict a severe punishment in this instance for the sake of example would be almost wholly nugatory, as the fact of the punishment could not be brought to the knowledge of those who are likely to commit such offences. The circumstance of the prisoners having voluntarily come to the Principal Assistant should also be considered, for if they had not come of their own accord, it is extremely improbable that they would have been seized at all. For persons in the savage state of the prisoners the infliction of stripes is, I conceive, the most suitable mode of punishment; and referring to the length of time the prisoners have now been in confinement, I would suggest that the 1st prisoner Chakra be punished with 195 stripes and the 2nd prisoner Riga with 100 stripes; and that they be then released with a suitable admonition.”

“In conclusion I would submit for the consideration of the Judges and of the Government the expediency of some modification in the existing rules, framed for the guidance of the Agents by Act XXIV. of 1839, so as to admit of offences of this nature, committed within the Maliahs, being punished by the corporal punishment on the spot, where such a course may appear to be proper and expedient, without the necessity for a previous reference to the Court of Foujdaree Udalut, as is required under the existing rules.”

On perusal of the record of the case, the 1st Puisne Judge of the Court of Foujdaree Udalut (A. D. Campbell) considered the charge to be fully established against the prisoners; and the Mahomedan Law Officers of the Foujdaree Udalut having been called upon to state to what punishment the prisoners, if convicted of the charge, would be liable under the Mahomedan Law, and having declared them liable to Tazeer-i-shudeed; the 1st Puisne Judge in the exercise of the powers vested in him by the provisions of Regulation VIII. of 1831, sentenced them respectively to impri-

5th July, 1811.
The case of Chakra and
Riga.

sonment with hard labor in irons for three years, and further to suffer corporal punishment, the 1st prisoner one hundred and ninety five and the 2nd prisoner one hundred lashes.

Before however ordering the sentence passed, to be carried into execution, it was deemed proper to report the case to Government, in order that the Government might determine whether, with reference to the present moral condition of the Hill Tribes, it was one in which it was expedient for the Government to extend mercy to the prisoners, by the remission of either part or of the whole of the sentence passed against them.

In forwarding their sentence the Court of Foujdaree Udaltut stated, that if any punishment at all were awarded, it appeared to them that that recommended by the Agent in para. 8 of his letter would, as a check and example to deter from a repetition of the offence, be wholly insufficient and inoperative; and in reference to the suggestion offered by the Agent in the last para. of his letter the Court observed that they could not concur in that suggestion, but were of opinion that every case of the kind should be referred for their consideration and final judgment in the mode prescribed by the existing rules.

The Government approved of the sentence passed upon the prisoners, but directed that that portion of it which prescribed the infliction of stripes should be postponed until after the arrival of Lieutenant McPherson (Assistant Agent) in that District, when that Officer would communicate with the prisoners with the view of ascertaining how far they might be useful to him in an inquiry which he was about to institute, after which the expediency of remitting the sentence or carrying it into full effect would be taken into consideration.

Lieutenant McPherson having subsequently, on the 20th June 1842, reported that the services of the prisoners would afford him no assistance in the prosecution of the inquiries in which he was engaged, and that the names of both of them were included in a list, compiled by him from various testimony, of persons habitually engaged in the traffic in human flesh; the Court of Foujdaree Udaltut recommended, that in consideration of the long interval of time which had elapsed since the sentence was passed, the corporal punishment awarded should be remitted, but that the re-

5th July, 1841.
The case of Chakra and
Riga.

maining portion of the sentence passed upon them should be carried into execution.

The Government having approved of the Court's recommendation, the corporal punishment was remitted, and the remainder of the sentence carried into execution.

GOVERNMENT,

Versus

1. MARIYAMMA,

2. BHAI.

Charge—*Exposing an Infant with intent to cause its Death.*

11th June, 1842.
The case of Mariyamma
and another.

Two prisoners convicted
of having exposed a
male infant with intent
to cause its death were
sentenced to imprisonment
for the respective
periods of eleven and
seven years, under the
provisions of Clause
third, Section VII. Regulation
XV. of 1803.

The prisoners were tried at Tellicherry before the Court of Circuit (present G. J. Waters) upon an indictment charging them with having at Manantoddy on or about nine o'clock P. M., on the 31st March, 1842, with intent to kill the male infant child, to which the first prisoner's daughter Maria had given birth, placed it in a garden and left it there until 10 P. M. of the 1st April following, in consequence of which neglect and want of nourishment the said child died

at 2 P. M. on the 2nd April following.

It appeared that the child was the offspring of an illicit connexion between the 1st prisoner's daughter Maria and a sepoy, and that with a view of averting the disgrace which the knowledge of its birth would entail on their family, the child was wilfully exposed by the prisoners under some plantain trees, where it was discovered by its cries on the following morning, and died twenty-eight hours afterwards, in consequence of the neglect and ill-treatment it had undergone; the midwives who attended at its birth deposing that it was born strong and healthy, and that it was perfectly well on the morning of the day it was exposed.

The trial having been referred to the Court of Foujdaree Udalt (present H. Dickinson and F. M. Lewin) the prisoners were convicted of the crime laid to their charge, and under the provisions of Clause third, Section VII. Regulation XV. of 1803, were sentenced respectively to imprisonment with labor suited to their sex,

11th June, 1842.
The case of Mariyamma
and another.

the 1st for eleven and the 2nd for seven years ; the guilt of the 1st prisoner, as the head of the family, being considered of a more aggravated nature than that of her daughter, the 2nd prisoner.

GOVERNMENT,

Versus

1. TIMMAREDDI,
2. WOBLESU,
3. CHINNAPPADU, *alias*
PEDDADASIGADU.

Charge—*Gang Robbery.*

15th July, 1842.
The case of Timmareddi
and others.

Every indictment must state some specific act ; a general charge of having belonged to a gang of robbers, or to a gang of persons assembled for the commission of any other crime, not being sufficient to justify a person being put on his trial, unless some specific act capable of proof be stated in the indictment.

The prisoners were tried at Bellary at the first Sessions of the Court of Circuit for 1842, (present W. R. Taylor) upon an indictment charging them with having in company with certain other persons, not apprehended, “ become a gang, had their haunts in, and infested the hills and jungles in the Talooks of Pennakonda and Kodikonda in the Zillah of Bellary, and in the Talook of Pulivandala in the Zillah of Cuddapah for a year before the month of March 1841, and committed divers robberies in the neighbouring villages.”

The prisoners were all convicted by the Circuit Court, and the 1st and 2nd prisoners having been already convicted of the crime of murder in another case, which had been referred for the final judgment of the Foujdaree Udalt, sentence was passed upon the 3rd prisoner only ; fourteen years' imprisonment with hard labor in irons being awarded to him, under the provisions of Clause third, Section IV. Regulation XV. of 1803.

On perusal of the Calendar the Court of Foujdaree Udalt (M. Lewin and F. M. Lewin) saw reason to question the propriety of the foregoing sentence, and they accordingly called for the record ; upon consideration of which they reversed the sentence awarded to the 3rd prisoner, on the ground that the indictment was fatally

15th July 1842.
The case of Timmareddi
and others.

defective, no specific act having been charged against the prisoners therein.

The Court of Foujdaree Udalut observed that there would have been nothing incorrect in trying the prisoners upon a charge of having been leaders of robbers, or having assembled parties for the commission of robbery or of any other crime; but that such an indictment must set forth some particular and specific act, as clearly shown in Sections III. and IV. Regulation XV. of 1803.

- “The object of assembling such parties,” the Court of Foujdaree Udalut remarked, “is only to be proved by some overt act, which
- “should have been mentioned in the indictment. The witness
- “Erugadu (an approver) mentions a long string of acts, all of
- “which might have been set forth in the indictment and proved;
- “the prisoners would then have had an opportunity of pleading;
- “or the prisoners might have been charged as leaders, or as be-
- “longing to a certain gang of robbers, who had committed certain
- “crimes proved by convictions produced at trial; but so general
- “a charge as the one before the Court, cannot, and ought not to
- “be received against any one.”

The Court of Foujdaree Udalut accordingly quashed the proceedings in this case, but directed that in the event of the prisoners not being convicted on any other charges, they should be detained in confinement, in order that it might be ascertained from the Magistrate, whether he was prepared to support by evidence the facts deposed to by the witness above adverted to.

KARUPPAYI,

Versus

KARUTTAN, *alias* VALAPAHNACHARI, and GOPALAN.

Charge—*Rape*.

24th August, 1843.
The case of Karuttan,
alias Valapahnachari,
and another.

The prisoners were tried at Madura at the 2nd Sessions of the Court of Circuit for 1843, charged with having committed a rape upon the person of the prosecutrix.

The Judge of Circuit (G. S. Hooper) in concurrence with the Mahomedan Law Officer convicted both the prisoners of the of-

24th August, 1843.

The case of Karuttan,
alias Valapahuachari,
and another.

In a case of rape it was held by the Court of Foujdaree Udalut that the fact of the prisoner not having fully completed his purpose could not be admitted as any palliation of his offence.

fence laid to their charge, and forwarded the trial for the final judgment of the Foujdaree Udalut with a recommendation that the prisoners should be sentenced respectively to imprisonment with hard labor, in irons, the first for five, and the 2nd for three years, and that the 1st prisoner should further receive 150 lashes; basing the distinction made by him in the amount of punishment recommended, upon

the fact that the 2nd prisoner was a much younger man than the 1st, and that he did not fully accomplish his purpose.

The Court of Foujdaree Udalut (present M. Lewin and A. Maclean) convicted both the prisoners of the crime laid to their charge, and sentenced them severally to seven years' imprisonment with hard labor in irons, observing no distinction in the degree of guilt evinced by them respectively, and considering the ground advanced by the Judge on Circuit in support of the more lenient sentence proposed in the case of the 2nd prisoner, that he had failed in the completion of his purpose, to be inadmissible.

CHITAMBARA AYYAN,

Versus

INYASI MUTTU SHAPULAN.

Charge—Gang Robbery.

3rd February, 1844.
The case of Inyasi Mut-
tu Shapulan.

The prisoner was tried before the Session Court of Trichinopoly upon an indictment charging him with having been concerned in a gang-robbery.

The Mahomedan Law Officer declared the prisoner to be liable only to Thomut.

A Futwah of Thomut is tantamount to a Futwah of acquittal, and in all cases in which such a Futwah may be delivered and the Session Judge may consider the evidence sufficient for conviction, he is bound to refer the trial for the final judgment

The Acting Session Judge (G. S. Greenway) considered the evidence insufficient to convict the prisoner of having been directly concerned in the commission of the robbery laid to his charge, but observing that "the prisoner, when apprehended, had made known where the stolen property was secreted, and admitted that he was

3rd February, 1844.
The case of Inyasi Mut-
tu Shapulan.

of the Foujdaree Uda-
lut, under Section
XXII. Regulation VII.
of 1802.

It is not competent to
a Session Judge to pass
sentence under Clause
fourth, Section IV. Re-
gulation VI. of 1822,
those provisions of the
Law being applicable
only to the Subordinate
Criminal Courts.

The prisoner in this
case was convicted of
"having been privy to
the receipt and secret-
ing of stolen property,"
and was sentenced by
the Court of Foujdaree
Udalut to six months'
imprisonment with
labor in irons, under
Clause second, of the
Section above quoted.

aware the property had been obtained by rob-
bery, and had failed to give information to the
Police Authorities on the subject, sentenced
him to six months' imprisonment with hard
labor in irons; the authority quoted for such
sentence being Clause fourth, Section IV. Re-
gulation VI. of 1822.

The Court of Foujdaree Udalut on perusal
of the Calendar observed, that the proceedings
of the Acting Session Judge were irregular;
that it was not competent to him to pass sen-
tence under the provisions of the Law above
quoted, which were only applicable to the Cri-
minal Courts of the Subordinate Judges or
Principal Sudr Amcens.

The Court remarked that it was equally in-
competent to the Acting Session Judge to
pass any sentence whatever in the case un-
der review; the Mahomedan Law Officer, who assisted at the
trial, having declared the accused liable only to Thomut or slight
suspicion, under which Futwah no punishment was legally adjudi-
cable, it having been frequently ruled by the Foujdaree Udalut
to be tantamount to a Futwah of acquittal; and that, therefore,
differing as he did with the Moofty, in regard to the result of the
trial, the Acting Session Judge should have proceeded under Sec-
tion XXII. Regulation VII. of 1802, to transmit the entire record
of the case for the final judgment of the Foujdaree Udalut.

The Court of Foujdaree Udalut accordingly directed that an
English translation of the record should be transmitted for their
consideration, and that the sentence passed upon the prisoner
should be suspended until further orders.

The record was accordingly forwarded to the Foujdaree Udalut,
and the Court (present A. Maclean) concurring with the Acting
Session Judge in his appreciation of the evidence, convicted the
prisoner of "having been privy to the receipt and secreting of
stolen property," and sentenced him to six months' imprisonment
with hard labor in irons, under Clause second, Section IV. Regu-
lation VI. of 1822.

KANDASAMI TORAKOUNDAN,

Versus

1. VENKATARAMAN,
2. APPANNA CHETTI,
3. KAILASA TEVAN,
4. AYYAKUNNU TORAKOUNDAN,
5. KANNU,
6. CHAKRAM, and
7. APPAVU TEVAN.

Charge—Conspiracy to commit Murder.

22d March, 1844.

The case of Venkataraman and others.

The record of this case, in which seven prisoners were charged with having conspired together to loose upon the prosecutor a venomous snake, with intent thereby to cause his death, was referred by the Session Judge for the final judgment of Foujdaree Udaltut under the concluding part of Clause Seventh, Section II. Regulation XV. of 1803; the Session Judge considering the punishment he was competent to award under that Clause to be insufficient for the offence of which the 1st prisoner was guilty.

The 1st and 2nd prisoners were convicted and sentenced respectively to ten and seven years' imprisonment the other prisoners being acquitted and released.

The prisoners in this case were arraigned before the Session Judge of Combaconum, upon an indictment charging them with having, on and previously to the 30th January, 1844, conspired together to loose upon the prosecutor a venomous snake with intent thereby to cause his death.

It was stated in the evidence for the prosecution that the 4th prisoner and certain other individuals, relatives of the prosecutor, against whom the latter had filed a suit in the Subordinate Court of Combaconum for the division of the family property, having formed the design of destroying the prosecutor and thereby becoming possessed of his share of the property in question, applied to the 1st and 2nd prisoners (the former of whom was a snake catcher), through the intervention of the 3rd prisoner, to effect the prosecutor's death for them by letting loose upon him a venomous snake, promising them as a reward for their assistance a present of 70 Rupees and one valy of land;

that the design was communicated by the 1st and 2nd prisoners to the 2nd witness for the prosecution, with a request that he would point out to them the prosecutor's place of sleeping, which he pro-

22d March, 1844.
The case of Venkataraman and others.

promised to do, on their offering him a reward of Rupees 50; that in their presence he, the 2nd witness, imparted their project to the 3rd witness, who came up while they were conversing on the subject, and who together with himself was bound by the prisoners to the strictest secrecy, a promise being held out to the 3rd witness that he should share the reward offered to the 2nd witness; and that having made himself acquainted with all the prisoners' plans he divulged them to the 1st witness by whom the matter was communicated to the prosecutor, and on the morning of the day, the night of which had been fixed for the commission of the intended murder, was reported by them and the 2nd witness to the Police Ameen, who deputed Peons to co-operate with them in the apprehension of the prisoners, of whom the 1st, 2nd, 5th and 6th were captured on the pial of a house at which they had previously arranged with the 2nd witness to be in waiting; a live cobra capello being found suspended in a cloth to the roof of the pial.

The 1st and 2nd prisoners on their examination by the Head of Police confessed the crime, both criminating the 5th and 6th prisoners; the 1st prisoner alleging that he had been induced by the 2nd prisoner to enter into the conspiracy, under a promise of receiving ten Rupees, admitting that he had caught the snake for the purpose of killing the prosecutor; while the 2nd prisoner stated that he had been requested by the 3rd prisoner, who had represented himself to have been employed in the matter by Venkatachala Tora Koundan, and his brother the 4th prisoner, to lend him his assistance in inducing the 1st prisoner to compass the prosecutor's death, and that the 3rd prisoner gave him 4 Rupees to pay the 1st prisoner as an inducement to lend his aid, with an intimation that 70 Rupees and one valy of land had been promised to the 1st prisoner, as a reward for the commission of the murder. Both 1st and 2nd prisoners admitted that the 2nd witness had been engaged by them to discover to them the prosecutor's sleeping place.

These prisoners subsequently retracted their confessions before the Criminal and Session Courts.

The 3rd, 4th, 5th, 6th, and 7th prisoners, the latter of whom appears to have been apprehended in consequence of his having been seen by the 3rd witness, at the house of Venkatachala Tora

22d March, 1841.
The case of Venkataraman and others.

Koundan, where the witness deposed that he heard Vencatachala Tora Koundan requesting the 2nd prisoner to perform for him a certain business, for which the latter was to obtain a reward; pleaded not guilty throughout.

Certain leaves were produced on the trial which were stated by the 2nd witness to have been given him by the 1st prisoner, to be taken by him as an antidote in the event of his being bitten by the snake; he having expressed to them his fear of running the risk of being bitten when the snake should be let loose.

In the house of the 2nd prisoner a cadjan letter was discovered, the meaning of which was obscure; but it apparently purported to have been addressed to the prisoner himself, and was to the effect that a man should be in some way put in jeopardy; and in the house of the 1st prisoner a puppet, some bones, and obscure writings on cadjans were found, all of which appeared to be connected with the practice of sorcery, to which the 1st prisoner was shown to be addicted.

The evidence in support of the charge consisted of that of the prosecutor, of the 1st, 2nd, and 3rd witnesses, of the Pcons who apprehended the 1st, 2nd, 5th and 6th prisoners, of the 1st prisoner's concubine who deposed to the 1st prisoner having brought a snake to his house on the day previous to his apprehension, and to the 2nd and 5th prisoners and 2nd witness having visited the 1st prisoner's house on that day, of the testimony of the 7th, 10th, and 11th witnesses, neighbours of the 2nd prisoner, who swore to the 4th prisoner having frequented the 2nd prisoner's house for several days previous to the apprehension of the prisoners by the Police, and of the witnesses who attested the 1st and 2nd prisoners' confession before the Police Amcen.

The 1st prisoner in his defence alleged that the snake had been brought by him to the pial at which he was apprehended, for the purpose of selling it to the prosecutor and 1st witness who had requested him to bring it to them. The remaining prisoners confined their defence to a simple denial of the charge, which, however, the 3rd, 4th, and 7th prisoners alleged to have been preferred against them from motives of enmity, connected with the suit in which the prosecutor was engaged.

22d March, 1844.

The case of Venkataraman and others.

The Jury, composed of the Mahomedan Law Officer of the Session Court and of two Hindu residents in the town of Combaconum, found a verdict of guilty against the first six prisoners, acquitting the 7th prisoner for want of proof.

In this verdict the Session Judge (F. M. Lewin) concurred, and having released the 7th prisoner unconditionally, referred the trial as regarded the remaining prisoners for the final judgment of the Foujdaree Udalt, with a recommendation in regard to the amount of punishment to be awarded to the several prisoners, to the following effect.

"The 1st prisoner being a hardened offender, having been imprisoned for two years for theft, and being a mischievous character, he seems to deserve a severe and exemplary punishment, and I therefore recommend that he be sentenced to ten years' imprisonment with hard labor in irons, and to receive 195 stripes."

"The 2nd prisoner being proved equally guilty of the crime laid to his charge as the 1st, being his chief accomplice, and the 4th prisoner being chiefly interested in the success of the plot, they, the 2nd and 4th prisoners, I think, should be also considered principals, and I recommend that they should be sentenced to seven years' imprisonment with hard labor in irons."

"Although the 3rd, 5th, and 6th prisoners are minor associates in this atrocious conspiracy, I think the ends of justice will be met by a sentence of five years' imprisonment with hard labor in irons, which I recommend accordingly may be passed upon them."

"I have deemed it my duty to refer this novel and atrocious case for the final judgment of the Foujdaree Udalt, with reference to the provisions of Clause seventh, Section II. Regulation XV. of 1803."

By the Court of Foujdaree Udalt, Malcolm Lewin, Acting 2nd Judge.—"I concur in the finding of the Presiding Judge and would sentence the prisoners as he has recommended."

Alexander Maclean, Acting 3rd Judge.—"I am unable to place any confidence in the evidence adduced to support the extraordinary charge in this case and would release the prisoners."

George James Casamajor, Acting 1st Judge.—"I would convict the 1st and 2nd Prisoners of the crime charged and sentence

22d March, 1844.

The case of Venkataraman and others.

them, the former to ten, the latter to seven years' imprisonment with hard labor in irons. The 1st is an old offender."

"I would also take security from the 5th and 6th prisoners, in two sureties of 50 Rupees for each, for two years."

"I would acquit and discharge the rest. There is no evidence that I can see against them."

"The 1st and 2nd prisoners distinctly confessed before the Police and the evidence of the 2nd and 3rd witnesses is full to convict them—it is corroborated by that of the 1st and 5th witnesses. Their confessions, however, are evidence against themselves only. It is difficult to reconcile them with the evidence of the 2nd witness; to a considerable extent, however, I think they may be reconciled, and so far as they can be, they are confirmed by the wide apparent diversity between them. It is also apparent to me, that each of the 1st and 2nd prisoners give their account such a turn as to shift as much as possible of the guilt from themselves."

The 1st and 2nd Judges concurring in the conviction of the 1st and 2nd prisoners, and the 1st and 3rd Judges agreeing to acquit the remaining prisoners, the 1st Judge waived his suggestion that the 5th and 6th prisoners should be placed under requisition of security; and two separate warrants were accordingly issued, one of which was signed by the 1st and 2nd Judges, and directed the imprisonment of the 1st and 2nd prisoners with hard labor in irons, for the respective periods of ten and seven years; the award of stripes which had been recommended by the Session Judge and agreed to by the 2nd Judge, being remitted at the suggestion of the 1st Judge.

A second warrant signed by the 1st and 3rd Judges, directed the unconditional release of the remaining prisoners.

N. B. It does not appear from the record for what reason Venkatachala Tora Koundan, against whom there would appear to have been as strong grounds of suspicion of having been concerned in the conspiracy for which the prisoners were tried, as there were against the 4th or 7th prisoners, was not placed upon his trial; no information on this point being contained in the Police proceedings or in those of the Criminal or Session Courts, but it is to be presumed that he absconded on hearing of the apprehension of the other prisoners.

The 2nd witness, by whom the plot upon the prosecutor's life was disclosed, stated in his evidence that the 1st and 2nd prisoners, when first communicating to him their intentions, informed him that "they had lately

22d March, 1844.
The case of Venkataraman and others.

destroyed a woman at Amdavandloor, by a snake, at the instigation of the 3rd prisoner "Kailasa Tevan." This statement was denied by the 1st and 2nd prisoners, but the circumstance was referred to by the prosecutor in his deposition, who stated that it was reported that the 3rd prisoner had "let a snake at his wife by means of some silk weavers, and thereby caused her death," in consequence of her having sued him for maintenance and obtained a decree against him. In answer to a question put by the Police Ameen to the 3rd prisoner to ascertain the last occasion of his visiting Combaconum, and in whose house he then put up, the circumstance of his wife having sued him for maintenance and having died from the bite of a snake a few months afterwards, was mentioned by the 3rd prisoner, but without any allusion to the charge alleged to have been made against him by the 1st and 2nd prisoners, that her death was caused by them at his instigation.

MUTTU PARIYA KOUNDAN,

Versus

1. RAMADATTAN,
2. YERRAN,
3. DUNNASI,
4. GURUVA BOYAN,
5. MUTTUDATTAN.

Charge—Murder.

31st October, 1845.
The case of Ramadattan and others.

The prisoners in this case were tried before the Session Judge of Coimbatore, upon an indictment charging them with having murdered the prosecutor's brother, by name Haruppan, a boy of nine years of age, by cutting his throat with a cock-spur.

The prisoners in this case, charged with having murdered a boy of nine years of age by cutting his throat with a cock-spur, were convicted by the Session Judge and by the 1st and 3rd Judges of the Foujdaree Udalut, but at the instance of the 2nd Judge of the Foujdaree Udalut the trial having been referred to the Chief Judge, who

The 1st and 2nd witnesses Rungan and Chinnan were originally committed as accomplices, but upon the recommendation of the Session Judge were subsequently admitted as approvers under the sanction of the Court of Foujdaree Udalut.

On the evening of the day that the murder took place, the deceased was missed by his mother, who accordingly sent her elder son, the

31st October, 1845.

The case of Ramadattan and others.

concurring with the 2nd Judge in considering the evidence insufficient for the conviction of the prisoners, and in the opinion that the murder had been perpetrated by two boys originally committed for trial as accessories, but subsequently admitted as approvers, an additional Judge was appointed under the provisions of Section 1 V. Regulation III. of 1825, who also concurring in the view of the case adopted by the 2nd Puisne Judge, the Prisoners were acquitted and released.

The practice of dealing with the evidence of witnesses in cases of life and death declared to be objectionable. Vide C. O. of 14th March, 1832.

In all cases in which two or more prisoners are indicted, each prisoner, when arraigned, should be required to plead separately to the indictment.

prosecutor, to search for him. During his search the prosecutor was informed by the 3rd witness that he had seen his brother in the company of the 1st witness, upon which he repaired to the house of that individual, who denied all knowledge of him. He subsequently met one Nanjammal who informed him that she had seen the 1st witness leading his brother near the chilli garden of Karuppa Koundan, the 6th witness, upon which the prosecutor returned to the house of Rangan the 1st witness, and again asked him and his elder brother Chinnan, the 2nd witness, if they knew any thing of his brother, which, however, resulted in a repetition of their previous denial. On the following day the prosecutor searched the garden referred to, in company with the 6th, 7th, and 8th witnesses and a few other persons, and discovered there the dead body of his brother with the throat and ears cut. The prosecutor then summoned the Monigars of the village and informed them that he suspected the 1st and 2nd witnesses to have been the perpetrators of the crime, in consequence of their having been last seen in the company of the deceased. The Monigars thereupon proceeded to the house of the 1st and 2nd witnesses, who then declared that they had seen the 1st, 2nd, 3rd, and 4th prisoners and one Subba (deceased) murder the deceased. They stated that on the evening in question the 2nd and 3rd prisoners came to them and bade them fetch the deceased to the chilli garden belonging to the 6th witness, where they were going to catch quails; they having taken him out with them for a similar purpose on the preceding day, but without success; that they did as they were bid, and took the boy with them to the garden, where they met the prisoners, who then murdered the deceased in their presence, the 1st prisoner cutting his throat with a cock-spur, while the other prisoners held him down on his back. They stated that the 1st prisoner, after having cut the deceased's throat, cut off his ear-rings, with the same weapon, and that the pri-

31st October, 1845.
The case of Ramadattan
and others.

soners buried those articles in their (witnesses') backyard. The 2nd witness produced to the Monigars the cock-spur, which he stated had been made by him for the 1st prisoner, and the ornaments taken from the deceased. The 1st and 2nd witnesses subsequently coupled the name of the 5th prisoner to those already mentioned by them, and described him as having been looking on and superintending the commission of the murder. Upon the commitment of the case to the Criminal Court, the Principal Sudr Ameen considered the 1st and 2nd witnesses to be by their own statements so deeply implicated in the murder, that he handed them over to the Magistrate, with a view to their commitment as accessaries, which accordingly took place. Finding, however, that there was no evidence against the prisoners originally committed, but that of the two first witnesses, the Principal Sudr Ameen recommended that they should be admitted as approvers. This was at first objected to by the Court of Foujdaree Udalt, who saw reason to believe that the proposed approvers were the actual perpetrators of the crime; but subsequently, upon a representation being made by the Session Judge, the Court of Foujdaree Udalt authorized their admission as approvers in the case.

The evidence before the Court of Session consisted of the testimony of the prosecutor, who deposed to his search for his brother (the deceased), and his discovery of him in the chilli garden of the 6th witness; of that of the 1st and 2nd witnesses, the approvers, who described the perpetration of the murder by the prisoners; of the 3rd witness who saw the deceased in company with the 1st witness on the evening the murder was committed, and viewed the body on the following day; of the 4th and 5th witnesses who saw the prisoners in the chilli garden on the evening in question; and of the 6th, 7th, and 8th witnesses who examined the corpse and described the nature and extent of the wounds inflicted on it. The examination of the 8th witness was dispensed with by the Session Judge, the points to which his evidence referred, having been deposed to by the 6th and 7th witnesses. .

The prosecutor and the 3rd and 6th witnesses assigned an ancient feud of thirteen years' standing, caused by the homicide of the 1st prisoners' brother by the father of the deceased, as the motive for the commission of the murder.

31st October, 1845.

The case of Ramadattan
and others.

The 1st witness before the Criminal Court stated that the prisoners were actuated by revenge for the seduction of one Alamelu, the wife of a cousin of the 5th prisoner, by Caruppa Koundan, the son of Kadar Koundan, the owner of the chilli-field; and that the murder was therefore perpetrated there, and the corpse left there, in order that the owner of the field might be charged with the commission of the murder. Before the Police both 1st and 2nd witnesses denied that they were aware of any cause for the commission of the murder, while before the Session Court the 1st witness repeated this denial, in contradiction of the statement made by him before the Principal Sudr Ameen; and the 2nd witness averred that he had heard it had originated in enmity between the prisoners and the father of the deceased.

The Session Judge (G. Bird) in concurrence with the Mahomedan Law Officer convicted the five prisoners of the offence charged against them, and recommended that they should be severally sentenced to death.

On the trial being referred for the final judgment of the Foujdaree Udalut, the 1st and 3rd Puisne Judges (G. J. Waters and T. E. J. Boileau) concurred in the view of the case adopted by the Session Judge, but being of opinion that the award of the extreme penalty of the Law to the 1st prisoner, who appeared from the evidence of the approvers to have been the actual perpetrator of the murder, would be sufficient, proposed to sentence the 1st prisoner to death, and the 2nd, 3rd, 4th, and 5th to transportation for life. The 2nd Judge, M. Lewin, expressed his conviction that the murder had been perpetrated by the 1st and 2nd witnesses (the approvers), and that the charge against the prisoners had been fabricated by them for the purpose of screening themselves. The Chief Judge, the Honorable Mr. Dickinson, having recorded an opinion in the case, when 1st Puisne Judge of the Court, upon the applications which had been made for the admission of the 1st and 2nd witnesses as approvers, it was proposed by the 2nd Judge that the trial should be laid before him. To this the 1st and 3rd Judges assented, and the trial was accordingly referred to the Chief Judge, who concurred in the opinion of the 2nd Judge, that the 1st and 2nd witnesses were the actual perpetrators of the crime. It then became necessary that an ad-

31st October, 1845.
The case of Hamadattan
and others.

ditional Judge should be appointed to go into the case ; the opinions being equally divided for and against the conviction of the prisoners charged ; and Mr. J. F. Thomas, then Chief Secretary to Government, and formerly Zillah Judge of Combaconum, was accordingly appointed an additional Judge under the provisions of Section IV. Regulation III. of 1825. The additional Judge concurring with the 2nd Judge and the Chief Judge in the acquittal of the prisoners of the offence charged, these Judges passed sentence in the case acquitting the prisoners, and recorded in the following terms their reasons for dissenting from the verdict of the Session Court.

“ An attentive consideration of the record of this case has impressed the Court with the conviction that the two individuals, on whose testimony the charge is considered by the Session Judge to have been mainly proved, were the actual perpetrators of the murder, from the consequences of which they have endeavoured to screen themselves by bringing a false accusation against innocent persons.”

“ There is not in the opinion of the Court a particle of evidence to corroborate the statement of the approvers ; as the witnesses who depose to having seen some of the prisoners on the spot about the time of the commission of the murder, are connections of the prosecutor's family, and their testimony is at variance with that of the approvers themselves, for they do not name the latter as present at the place.”

“ Many discrepancies and contradictions, are discoverable in the depositions of the approvers, differing as to their importance, but altogether unaccountable, except on the presumption that their whole story is false.”

“ Both of these witnesses, when first examined, omitted to name the 5th prisoner, but subsequently denounced him as the principal actually superintending and directing the commission of the crime.”

“ They both declared before the Head of Police that they were aware of no cause for the murder, but when examined before the Principal Sudr Amecn, the 1st witness on two occasions stated that the motive for the murder was revenge in consequence of Karuppa Koundan, the son of Kadar Koundan the

31st October, 1845. "owner of the field, having seduced Alamelu,
 The case of Ramadattan "wife of the son of the aunt of the 5th pri-
 and others. "soner, which prompted them to kill the boy
 "and to leave his corpse in the field, in order that Karuppa Koun-
 "dan might be charged with the murder."

"Before the Session Judge, the 1st witness stated that he was
 "aware of no cause whatever for the murder, while the 2nd said
 "that he had heard that it arose out of enmity between the fa-
 "ther of the murdered boy and the prisoner."

"It is to be remarked that none of the other witnesses mention
 "this story of Alamelu, all agreeing in assigning altogether a dif-
 "ferent cause for the family feud."

"The approvers, when originally examined before the Head of
 "Police, clearly described the act of the cutting of the boy's throat
 "to have commenced after their return from the cattle-pen. They
 "however afterwards stated that they found the deed nearly ac-
 "complished when they returned."

"Before the Police Officer, the 1st witness stated that the 2nd
 "prisoner shut the mouth of the deceased, while the 3rd sat on
 "his chest, which statement he reversed when examined by the
 "Assistant Magistrate."

"And again before the Police Officer, the 2nd witness stated
 "that the 4th prisoner held the hands of the deceased, while be-
 "fore the Assistant Magistrate he deposed that he held his legs."

"Independently, however, of the absence of all corroborative
 "evidence and of the existence of the numerous variations and
 "contradictions above adverted to in the testimony of the 1st and
 "2nd witnesses, (the approvers) the story advanced by them ap-
 "pears in itself to be extremely improbable."

"It is alleged that six persons combined and secreted themselves
 "on a spot close to their own houses to compass the death of a
 "child of nine years, that although they had thus combined and
 "had engaged persons to entice the child with the view of murder-
 "ing him, they were not prepared with even a stick nor a rope
 "nor any weapon to effect their purpose, but had recourse to a
 "cock-spur, found, as it would appear, on the person of a prisoner
 "who could scarcely have any motive the most distant for join-
 "ing in the murder."

"Lastly it is alleged that five persons were engaged in the

31st October, 1945.
The case of Ramadattan
and others

“actual commission of the crime ; and that they
“not only took no precautions against dis-
“covery, but took care to have two witness-
“es, (the approvers,) cognizant of every act and able to give
“evidence circumstantially to the particular part borne by each ;
“and that although the motive of the murder was revenge alone,
“ (whether against the child’s family or the owner of the field is
“left undetermined), yet the murderers, who were undisturbed,
“split the ears of the child to secure the rings, and having taken
“all his ornaments, secreted them in a place, not likely to throw sus-
“picion on the owner of the field, but where the witnesses (the ap-
“provers) could produce them at a moment’s notice ; and added
“to this, put with them the weapon with which the murder was
“committed, though its natural place was on the person of its
“owner.”

“The improbability of such a story ; their taking away the
“child from his home and their denial of this fact ; the production
“of the ornaments on their own premises ; the ears split for the
“purpose of securing the ear-rings ; their consistency in a bare out-
“line of the accusation, and their variations in other parts of their
“statement ; their marked intelligence, and the nature of the wea-
“pon used ; all the features of the case lead the Court to believe
“that the approvers perpetrated the crime which they have charg-
“ed against the prisoners, whom they accordingly direct may be
“forthwith unconditionally released.”

“With reference to the memorandum of the Session Judge,
“showing that he did not consider it necessary to examine the
“8th witness for the prosecution in this case, the Court resolve to
“direct the attention of that officer to the rule laid down in the
C. O 14th March, 1932.

“Circular Order noted marginally, in which the
“practice of dispensing with the evidence of
“witnesses in cases of life and death is declared to be highly ob-
“jectionable.”

“It is also desirable that each prisoner, when arraigned, should
“plead separately to the indictment or charge.”

CHELLAN,

Versus

1. MUTTAN,
2. KARI, *Son of SAPPAN*,
3. KARI, *Son of CHINNAN*,
4. KATTAN,
5. KUTTI, (*A Female*).

Charge—Robbery by open violence and receiving plundered property with a guilty knowledge.

22nd October, 1846.

The case of Muttan and others.

It was ruled by the Court of Foujdaree Udaltut in this case that a married female is not punishable for having been concerned in an offence committed by her husband, if the husband have been present when she did the act charged against her; unless it clearly appears that she was an active and voluntary offender; the presumption being that a woman so circumstanced has acted under her husband's coercion.

The 1st, 2nd, 3rd, and 4th prisoners were charged before the Session Court of Combaconum with having on the night of the 22nd June, 1846, proceeded in an armed gang to the house of the prosecutor at Tagatur in the Talook of Jitrapundi, beaten and ill-treated the prosecutor and the other inmates of his house, and robbed him of paddy, cloths, utensils, &c., valued at Rupees 26-14-0.

The 5th prisoner (wife of the 1st prisoner) with having received from her husband eighteen beads, knowing them to have been obtained by gang robbery.

The Session Judge (F. M. Lewin) in concurrence with two assessors who were associated with him in the trial, convicted the prisoners of the offences respectively laid to their charge, and under the provisions of Clause third, Section IV. Regulation XV. of 1803, sentenced the 1st, 2nd, 3rd, and 4th prisoners to 14 years' imprisonment with hard labor in irons, adjudging the 1st prisoner in addition to receive 195 stripes with a cat-o-nine tails.

The 5th prisoner he sentenced to six months' imprisonment with labor suited to her sex, under Clause second, Section IV. Regulation VI. of 1822.

In submitting the Calendar to the Court of Foujdaree Udaltut the Session Judge recommended that on the score of the youth of the 2nd, 3rd, and 4th prisoners the prescribed punishment should be mitigated in the case of the 2nd and 3rd prisoners, who were

22nd October, 1846.
The case of Muttan and
others.

described by him as mere boys, to one year's imprisonment, with 50 stripes with a cat-o-nine tails, and in that of the 4th prisoner to eight years' imprisonment.

. The Court of Foujdaree Udalt (present Malcolm Lewin and T. E. J. Boileau) on perusal of the abstract of the evidence recorded in the Calendar, sanctioned the mitigation of punishment in favor of the 2nd, 3rd, and 4th prisoners, recommended by the Session Judge, and called upon that officer to state "from whom the 5th prisoner received the stolen property found upon her, and whether it was with the connivance of her husband the 1st prisoner."

The Session Judge having stated in reply, that the 5th prisoner was shown to have received the stolen property in question from her husband the 1st prisoner, the Court of Foujdaree Udalt observed, that it was against the Law to punish a woman for receiving stolen property from her husband, and they accordingly in the exercise of the powers vested in them by Section XXXV. Act VII. of 1843, annulled the sentence passed upon the 5th prisoner, and directed that she should be set at liberty.

On receiving the orders of the Court the Session Judge, previous to carrying them into effect, submitted that Clause second, Section IV. Regulation VI. of 1822, which provides punishment for receivers of stolen property, makes no exception in favor of a wife receiving stolen property from her husband. He also referred to certain cases as precedents, in which females had been sentenced to punishment for having received stolen property from their husbands, and which sentences had received the approval of the Court of Foujdaree Udalt, and he forwarded a translation of a Futwah delivered by the Mahomedan Law Officer of his Court on a question propounded to ascertain the Mahomedan Law on the point in question, in which Futwah it was declared that a wife receiving stolen property from her husband, knowing it to have been stolen, is punishable under the Mahomedan Law. Under these circumstances the Session Judge submitted that the case did not come within the scope of the provisions of Section XXXV. Act VII. of 1843.

The arguments advanced by the Session Judge induced the Court of Foujdaree Udalt to call for the opinion of the Cazee-ool-coozat

22nd October, 1846.
The case of Muttan and
others

upon the point of Law adverted to, and that Officer concurring in the Futwah delivered by the Law Officer of the Session Court, the Court of Foujdaree Udalut (present G. J. Waters and W. A. Morehead) resolved to cancel the opinion previously recorded by the Court of the illegality of the sentence passed by the Session Judge upon the 5th prisoner; but considering, that although the punishment of a female so situated was not contrary to any Law in force in the Company's Courts, it was for obvious reasons highly inexpedient in any case in which the woman was not clearly proved to have been an active and voluntary agent in the receipt or concealment of the stolen property, they adhered to the order for the release of the 5th prisoner and furnished the Session Judge with the following quotation from the proceedings of the Court, under date the 2nd August, 1844, which, they observed, correctly defined the views entertained by the Foujdaree Udalut regarding the degree of culpability attaching to a married female under the circumstances of the case under remark.

“ There is no objection to putting a married woman on her trial for being concerned in an offence committed by her husband. But if the husband was present at the act proved against her, she ought to be exempted from punishment, on the presumption that she acted under her husband's coercion; unless it clearly appears that she was an active and voluntary offender.”

SUBRAMANYAN and VAILU MAILU,

Versus

- | | |
|-----------------------|---------------------|
| 1. VAIDAMURTYAPILLE, | 8. VANNAMUTTU, |
| 2. SAMITEVAN, | 9. VELANGADIMADAN, |
| 3. KURUKILLATEVAN, | 10. NAYANADYANADAN, |
| 4. VAYAPURI, | 11. SEVANU, |
| 5. KUTTALALINGANADAN, | 12. SINNNADAN, |
| 6. PARYA KAUNUSUPPAN, | 13. MADAN, |
| 7. SUPPAN, | 14. VELLAYAN. |

Charge—Gang Robbery.

10th November, 1846.
The case of Vaidamur-
tyapille and others.

The prisoners were charged before the Session Court of Tinnevely with having at eight

10th November, 1845.
The case of Vaidamur-
tyapille and others.

The prisoners in this case who were tried for the crime of Gang Robbery by open violence, were convicted by the Court of Foudaree Udalut, the first ten prisoners of an assault attended with aggravating circumstances, and the remaining four of having been accessory to the commission of the said assault—the Court of Foudaree Udalut considering that as Robbery was evidently not the object with which the mob went forth to the village in which they committed the outrages proved against the prisoners, their offence, although accompanied by the plunder and destruction of property, could not with propriety be viewed as the crime of “Robbery by open violence” as defined in the Regulations.

The prisoners were sentenced respectively to imprisonment the first ten for three years, and the remaining four for the period of one year.

o'clock in the morning of the 6th November 1845, assembled with a mob of about 500 persons and proceeded armed with cudgels, spears, &c., to the houses of the prosecutors in the village of Ayanur, and plundered therefrom and from the person of the 2nd prosecutor gold and silver jewels, grain, &c. valued at Rs. 127-14-0.

The outrage in which the prisoners were charged with having been concerned, was one of a series committed on the 5th and 6th November, 1845, by the Hindu inhabitants of Ayanur and the neighbouring villages upon the native converts to Christianity residing there. It would appear that for some time previously much ill-feeling had existed between the Hindu and Christian inhabitants of the villages in question, originating in disputes regarding land, and in the alleged demolition of a Hindu Pagoda, and aggravated by feelings of religious hostility, which led to the assemblage, on the dates specified, of large mobs of Hindus, who proceeded to the several villages in which the Native Christians resided, maltreated the inhabitants, and destroyed property to a considerable amount. The circumstances were immediately reported to the Po-

lice and Magisterial Authorities, and several persons were apprehended and committed for trial upon charges of gang robbery to the Session Court of Tinnevely.

The trials held were all referred to the Court of Foudaree Udalut for final judgment in consequence of a difference of opinion between the Session Judge and the Mahomedan Law Officer, in regard to the sufficiency of the evidence for the conviction of the accused. In all the trials referred previously to that under notice, the prisoners charged were acquitted by the Court of Foudaree Udalut; the evidence to their identification being considered insufficient.

It is to be observed that the sentence of acquittal in each of these cases was passed by a single Judge, the majority of the Court, as then composed, having decided that under the provisions of

10th November, 1846.

The case of Vaidamur-
tyapille and others.

Section XXXIII. Act VII. of 1848, a sentence of acquittal by a single Judge of the Foujdaree Udaltut was final. Previously, however, to the disposal of the case now under notice, three new Judges were appointed to the Court of Foujdaree Udaltut, who having taken the question referred to into their deliberate consideration, decided that the terms of Section XXXIV. of the above-mentioned enactment restricted the power of a single Judge of the Court to pass a final sentence in trials held by a Session Judge, to those cases in which such single Judge might *concur* with the Session Judge whether for conviction or acquittal.

In the case under notice the Law Officer of the Session Court pronounced the evidence insufficient for the conviction of any of the prisoners charged.

The Session Judge (W. Douglas) dissented from this Futwah and deeming the evidence sufficient for the conviction of all the prisoners of having been concerned in the acts of robbery by open violence charged against them, recommended that the 8th, 9th, 10th, and 11th prisoners should be severally sentenced to imprisonment with hard labor in irons for the period of four years, and the 12th, 13th, and 14th prisoners to the same punishment for the period of two years. The remaining prisoners being concerned in other cases previously referred for the final sentence of the Foujdaree Udaltut, the Session Judge observed that any sentence to be passed upon them in this case would merge in those which might have been awarded in the other cases referred to.

The Court of Foujdaree Udaltut (present E. P. Thompson and W. A. Morehead) on perusal of the record decided, that considering the hour and time at which the acts charged were said to have been committed, the number of the mob collected, and the manner in which they approached the village, viz., beating tom-toms and blowing horns, what is usually designated as gang robbery was not the object which the prisoners had in view.

It appeared to the Court that the two acts of robbery charged against the prisoners were the result of the lawless assembling of so large a body of persons as are said to have proceeded to the village on the occasion referred to, but that they did not form the object which induced the mob to enter the village of Ayanur.

10th November, 1846.
The case of Vaidamur-
tyapille and others.

Entertaining this view of the case the Court of Foujdaree Udalut were of opinion that the general outrage which had been perpetrated on the whole village, should have formed the principal charge ; the particular cases of robbery then and there committed, being entered as additional counts in the indictment ; and that the prosecution of the case should have been conducted by the Government Vakeel.

They observed, that “ had this course been adopted the Court of Foujdaree Udalut would have been enabled to deal on its merits with the actual amount of crime committed ; that full evidence would have been procurable to the fact that the prisoners charged were present with, and formed an active portion of, the mob assembled, and the necessity of convicting particular individuals of particular acts of violence would have been to a great degree avoided.”

The Court remarked that the “ records of this and of other cases having been laid before the Court of Foujdaree Udalut in their present form, the Court although satisfied that unusual acts of outrage had been committed in the district of Tinnevely, could only form their estimate of the guilt of the parties charged on the individual acts proved against them in the cases under consideration.”

In regard to the appreciation of the evidence in this case the Court stated that they had been much embarrassed in the unreserved acceptance of the prosecutor's evidence by the length of time which the Police allowed to elapse previous to recording any written statement of the offences charged against the prisoners ; “ an omission,” which the Court observed, was “ the more to be regretted, as the prosecutors who appeared to have been in immediate communication with the Police authorities, declared that almost all of the prisoners charged had been by name long known to them.”

The Court of Foujdaree Udalut expressed their concurrence with the Session Judge in his appreciation of the evidence of the 1st prosecutor, by whom the first ten prisoners had been identified as having been more or less concerned in the plunder of his house, and they considered the testimony of the 1st and 2nd witnesses suf-

10th November, 1846.
The case of Vaidamur-
tyapille and others

sufficient to prove the alleged attack on the 1st prosecutor's house, and also their recognition at the time of the prisoners' named by the said prosecutor.

The Court accordingly convicted the above-mentioned prisoners of an assault attended with aggravating circumstances, being unable to view them as gang robbers, or the crime committed by them as one done in pursuance of a preconcerted plan for gang robbery, and considering, that under the circumstances of the case, a sentence of three years' imprisonment with hard labor in irons would sufficiently meet the requirements of justice, sentenced them accordingly.

With regard to the 11th, 12th, 13th, and 14th prisoners the Court of Foujdaree Udalut considered the evidence sufficient to prove their having been present in company with the other prisoners at the attack on the prosecutors' houses, but as they appeared, with the exception of the 11th prisoner, to have taken no part in the attack, having been brought to the spot by the mob for the purpose of beating tom-toms, the Court sentenced them only to one year's imprisonment with hard labor in irons.

That no serious act of violence was committed by the 11th prisoner, the Court were satisfied from the omission of his name in the first statement made by the prosecutors.

SYUD LALU KHAN,

Versus

THOMAS,

Charge—*Theft*.

8th March, 1847.
Thomas' case.

The Court of Foujdaree Udalut ruled in this case that in all cases of theft unattended with aggravating circumstances tried before a Session Judge and a Jury or Assessors the sentence should be passed under the provisions of Section XXI. Regulation VII. of 1802 :

The prisoner was tried before the Session Court of Combaconum upon an indictment charging him with having on the night of the 17th December 1846, stolen articles valued at Rupees 14-12, from the house of the prosecutor in the village of Tirupalutur in the Talook of Papanassam.

The case was committed to the Session Court for trial instead of being disposed of by the Sus-

8th March, 1847.

Thomas' case.

the absence of a Futwa not rendering the offence punishable under any other provisions of the Law.

ordinate Judge, in consequence of the prisoner being an old offender, having been convicted and punished on four previous occasions, and the Session Judge (F. M. Lewin) in concurrence with two assessors, who were associated with him on the trial under the provisions of Section XXXII. Act VII. of 1843, considering the evidence in this case sufficient to the prisoner's conviction, sentenced him to four years' imprisonment with hard labor in irons, and to receive 100 lashes with a cat-o-nine tails; the authority quoted for such sentence being Clause seventh, Section II. Regulation XV. of 1803.

This sentence was passed under the provisions of the Law quoted, with reference to the instructions conveyed in the proceedings of the Foujdaree Udalut, under date the 11th September, 1845, in which the Court had recorded their approval of the sentence passed in cases Nos. 35 and 36 of the Calendar of that year, but observed "that it should have been passed under Clause seventh, Section II. Regulation XV. of 1803; and not under Section XXI. Regulation VII. of 1802, which is only applicable when Hud is pronounced, and cannot be quoted in cases tried by a Jury, and that "the sentence should be amended accordingly."

And in their proceedings, under date the 5th May, 1845, on review of certain Calendars submitted by the Session Judge of Mangalore, the Court had observed that "the Session Judge must sentence under Clause seventh, Section II. Regulation XV. of 1803, "there being no other Law which applies to this case, and under "which Law, he might and ought to have passed sentence of his "own authority without applying to this Court. He will observe," the Court proceeded to remark, "that Section XXI. Regulation VII. of 1802, is only apposite when Hud is pronounced, and cannot, therefore, in cases tried by a Jury, be quoted with propriety. "Clause first, Section V. Regulation XV. of 1803, is explanatory "only and not penal, and Clauses second and fifth, Section II. Regulation VI. of 1822, are not to be adduced as authorities under "which a sentence may be actually passed." •

And again, in their letter of the 23rd May, 1846, to the Session Judge of Cuddapah, the Court had remarked that "it would "be anomalous to call in the aid of a Moofly for the final disposal "of a trial which, as having been proceeded with by the Session

8th March, 1847.

Thomas' case

" Judge and assessors, did not exhibit the
 " preliminaries required by Mahomedan Law,
 " and consequently that in the trial under re-
 " mark, sentence should be recorded under the provisions of Clause
 " seventh, Section II. Regulation XV. of 1803."

The present Judges of the Foujdaree Udalt (G. S. Hooper, E. P. Thompson, and W. A. Morehead,) on finding that several sentences had thus been passed, which, as appeared to them on the first glance, were not in conformity with the existing Law, deemed it their duty to bring the whole matter under review,—and recorded in the following extract from their proceedings the grounds upon which, after a mature and attentive consideration of the question, they had arrived at a conclusion opposed to that adopted by the former Judges of the Court.

" The Court (as at present composed) cannot assent to the posi-
 " tion, that to enable a Session Judge to pass sentence under Sec-
 " tion XXI. Regulation VII. of 1802, it is necessary that a Futwa
 " of Hud should be actually 'pronounced.' The only question of
 " importance to be first determined is—to what specific penalty
 " the prisoner would be liable under the Mahomedan Law. Now
 " it is perfectly well known that under that Law, a prisoner fully
 " convicted of Theft is liable to Hud: and the British Legislature,
 " fully aware of this, enacted in Section XXI. Regulation VII. of
 " 1802, that a Futwa of Hud, or amputation of one limb, should
 " be commuted to imprisonment for seven years, and of two limbs
 " for fourteen years. The legislature, therefore, by that enact-
 " ment determined that under ordinary circumstances, seven
 " years' imprisonment was the proper punishment for simple Theft,
 " and, as will be presently shown, it is not competent, to a Court
 " of Session, of its own authority and at its own discretion, to
 " lessen that punishment."

" And if the objection, that because a Futwa is not actually pro-
 " nounced, by reason of a Mahomedan Law Officer not being em-
 " ployed, be valid, it applies with equal, if not with stronger force to
 " the passing of the sentence under Clause seventh, Section II. Re-
 " gulation XV. of 1803;—the provision pointed out by the late
 " Judges as that under which such sentences should be passed. For
 " that Clause declares that the Judge shall pass sentence in cases in
 " which the Prisoner is '*declared liable to discretionary punishment,*

8th March, 1847.

Thomas' case.

“ and the crime of which he is convicted has
 “ not been provided for by ‘ any *stated penalty*
 “ *ty* in the Mahomedan Law’—and further,
 “ that in such cases the Judge shall, ‘ after consulting with the
 “ Law Officer respecting the measure of punishment’ adjudge the
 “ prisoner, &c. &c. Now in the cases which elicited the comments
 “ and instructions of the late Judges, not one of these prescribed
 “ conditions was fulfilled. For the crime in each was *Theft* : and
 “ that crime, it is well known, *is* provided for by a *stated penalty* in
 “ the Mahomedan Law : namely—Hud : and as the trial was car-
 “ ried on without the aid of the Mahomedan Law Officer, the pri-
 “ soners were *not declared* liable to *discretionary* punishment, and
 “ the presiding Judge did *not consult* with the Law Officer.”

“ But that in providing by Act VII. of 1843, that Jurors or
 “ Assessors might, at the discretion of the Session Judge, be em-
 “ ployed in the hearing of Criminal cases, and that the intervention
 “ of the Mahomedan Law Officer might be dispensed with, it was
 “ not the intention of the Legislature that the *Mahomedan Law* it-
 “ self should be dispensed with, may be safely inferred, not only
 “ from the absence of any specific provisions to that effect, but from
 “ a consideration of the provisions of Act I. of 1840 ; that Act—
 “ for regulating the procedure on trials referred to the Court of
 “ Foujdaree Udalt at Madras—having first stated that ‘ the *Fut-*
 “ *wa* may be *dispensed* with in that Court, *without altering or impair-*
 “ *ing* the authority of the Mahomedan Law,’ and next enacted that
 “ that Court shall not be required to take a *Futwa* from their Law
 “ Officers, concludes with the proviso that ‘ nothing in this Act
 “ contained shall authorize the said Court to dispense with the Ma-
 “ homedan Law in any case which, before the passing of this Act,
 “ would have been determinable according to that Law.’ It cannot,
 “ therefore, for a moment be admitted that, without a special pro-
 “ vision authorizing them to do so, the Lower Courts should be at
 “ liberty to dispense with that Law at their own discretion.”

“ In cases of ‘ Culpable Homicide’ (this is cited as an example)
 “ the sentences of the Foujdaree Udalt run thus :—The Court, &c.
 “ &c. having convicted the prisoner of Culpable Homicide, ‘ for
 “ which the penalty of *Deyut* is awardable under the Mahomedan
 “ Law, as declared in the *Futwas* of their Law Officers,’ and then
 “ follows the prescribed commutation. The same rule applies to

8th March, 1847.

Thomas' case.

“cases in which “Hud” is awardable, and
 “is that by which the Courts of Session must
 “be guided, so long as the Mahomedan Law
 “is, as it undoubtedly is at present, the basis of the Criminal Code
 “of this Presidency : and in any case in which a Session Judge may
 “be in doubt as to the penalty, it is his duty to refer that doubt to
 “the Mahomedan Law Officer attached to his Court.”

“The foregoing reasons appear to the present Judges amply
 “sufficient to prove that the construction given by the late Court
 “to the Law on this subject is unsound and untenable ; but there
 “are other objections to the practice sanctioned by that construc-
 “tion, more important, because founded on general principles and
 “having no reference to an arbitrary system, to which it is neces-
 “sary, before bringing these remarks to a close, briefly to advert.”

“One of the objects for which the Court of Foujdaree Udalt
 “was established was ‘that an uniformity of decision may be pre-
 “served throughout the several Courts of Circuit’ (Session Courts.)
 “‘and for the better regulation of whatever relates to Criminal
 “cases.’ Again, the rules prescribed for the guidance of the Cri-
 “minal tribunals in cases for which the Mahomedan Law provided
 “a specific penalty (and to the cases now under consideration
 “these rules are declared in the preamble to Regulation XV. of
 “1803, to be especially applicable), were enacted upon this ex-
 “press ground, namely, that it is necessary that provision be
 “made for determining the punishment to be adjudged by the
 “Criminal Courts, as well to guard against the infliction of any
 “punishment without sufficient evidence of guilt, as to *maintain*
 “*the uniform and adequate punishment* of offenders, when convict-
 “ed.”

“Now the practice which has grown out of the construction
 “given to the Law by the late Court, goes to frustrate all these
 “objects ; it destroys uniformity ; it deprives the Foujdaree Uda-
 “lut of the opportunity and power to maintain uniformity ; and
 “it has a tendency to encourage the infliction of *inadequate* pen-
 “alties. Of this, what has already taken place, affords a con-
 “vincing proof.”

“For, while in some Districts in which assessors are not em-
 “ployed, but a Mahomedan Law Officer sits with the Session
 “Judge, sentences of seven years’ imprisonment are passed ; in

8th March, 1847.

Thomaz' case.

"others, as at Combaconum, that term of imprisonment has been reduced at the discretion of the Session Judge, to four years; at Rajahmundry to five and three years; while at Mangalore, in cases certainly not exhibiting any marked features of palliation, it has been reduced to *eight months*."

"It needs no argument to show that such a state of things, so opposed as it is to all sound principles of jurisprudence, cannot be permitted to continue."

"Closely connected with these last objections is another, which was hinted at in the concluding passage of para. 7 of these proceedings, and which is founded upon a consideration of the provisions of Sections III., IV., and V. of Regulation I. of 1825. In those Sections, the Foudaree Udalut, are empowered, upon receiving an application to that effect from the Circuit (or Session) Judge, to mitigate the prescribed penalties for certain offences: and of those sections, Section IV. exclusively and especially applies to cases of the very nature now under discussion, or, as it is therein expressed, to cases in which 'the sentence prescribed by Section XXI. Regulation VI. of 1802, may be considered by the Judge, holding the trial, to be too severe.' This power of mitigation is vested in the Foudaree Udalut alone, who are expected in this, as in every other department of their duties, to administer justice upon fixed principles: and who therefore, whether sanctioning or disallowing proposed mitigations, should still maintain that uniformity and adequacy of punishment, which the Legislature has declared to be so essential to the successful administration of Criminal Justice."

"The present Judges are satisfied that the late Court in permitting the Courts of Session to diminish, at their own discretion, the penalties which the Regulations prescribed for certain offences, divested themselves of an authority, which the Legislature had, for wise purposes, conferred upon them alone."

"The Court have therefore resolved, upon the several grounds above recorded, to set aside the instructions issued by the late Court, as above cited, and to enjoin the judicial Officers to whom those instructions were sent, to adopt in their future practice, the views set forth in these proceedings, and 'to regulate their sentences by the Mahomedan Law, excepting in cases in which a

8th March, 1847.
Thomas' case.

"deviation from it may be expressly authorized by any Regulation passed by the Governor in Council."

Before sanctioning the sentence passed by the Session Judge in the case under notice, the Court of Foujdaree Udalut called upon that Officer to state what had led to the apprehension of the prisoner, and being satisfied from a perusal of the Session Judge's return, that the conviction of the prisoner was correct, the Court confirmed the sentence to which the prisoner had been adjudged.

GOVERNMENT,

Versus

LAKKAVARAPU SARADHI. .

Charge—Murder.

28th July, 1847.
The case of Lakkavarapu Saradhi.

The prisoner in this case was tried before the Agent to the Governor of Fort St. George at Ganjam, and pleaded guilty to an indictment charging him with the wilful murder of one of his wives named Lakshmi.

The mere fact of a prisoner, convicted of the murder of his wife, having suspected her chastity held by the Court of Foujdaree Udalut not to be a sufficient ground for remitting the extreme penalty of the Law.

The murder, it appeared, was perpetrated in the prisoner's house at midnight, and so secretly that no alarm was raised or sound heard by the neighbours, or even by the prisoner's second wife, who was sleeping in the adjoining room, and who, at the prisoner's desire, proceeded early on the following morning to visit a sick relative in a neighbouring village, without any suspicion of what had occurred during the night, and did not return till late in the day when she found her husband in the custody of the Police.

The murder, was brought to light by the prisoner's neighbours, who, missing the deceased, interrogated him regarding her, and after some questioning elicited from him a full confession of his having murdered his wife in consequence of his having entertained suspicions of her fidelity, and buried her body in a room in his house from which it was immediately exhumed.

On examination of the corpse an extensive wound was found on the throat, which evidently had been inflicted with a knife, and

28th July, 1847.
The case of Lakkavarapu
Saradhi.

must have caused instantaneous death; and upon information given by the prisoner a knife was found in the loft of his house, and also a pot containing a cloth, partially stained with blood, upon which he stated that the deceased was lying when the murder was committed.

As a ground for commuting the extreme penalty of the Law the Agent (R. A. Bannerman) urged that the prisoner appeared to have "committed the deed in a moment of phrenzy at, as he believed, the infidelity of his wife" that he was "apparently even then scarcely sensible of the enormity of his offence," and that he had previously borne the character of an industrious, well-conducted, in-offensive man, and on the general principle that the extreme penalty of the Law should be reserved for the punishment of guilt of an especially aggravated degree, the Agent recommended that it should be commuted in this case to transportation for life.

The Court of Foujdaree Udalt (present G. S. Hooper and E. P. Thompson) on consideration of the record of the trial were unable to concur with the Agent in considering the grounds of mitigation urged by that Officer sufficient to justify their commuting the prescribed punishment in this case, and they accordingly adjudged the prisoner to suffer death.

The Court observed that the prisoner by his own confession "had premeditated the commission of the crime," and "had even procured a mamotty beforehand for the purpose of burying the corpse," and that "he had nothing beyond bare suspicion of his wife's misconduct to adduce as his motive; no proof of it whatever."

RAMAYA KOUNDAN,

Versus

NANJAN.

Charge—*Gang Robbery by open violence.*

14th September, 1847.
Nanjan's case.

The prisoner was charged before the Session Judge of Coimbatore, with having on the 19th June, 1847, in company with another person, not apprehended, proceeded to the garden of the prosecutor, there

14th September, 1847.
Naujan's case.

wounded him on the head by beating him with a cudgel, and robbed him of cholam cars valued at one anna.

The distinction between the offences of "robbery by open violence" and "theft" illustrated.

The prisoner was convicted by the Session Judge and sentenced under Clause third, Section IV. Regulation XV. of 1803, to 14 years' imprisonment with hard labor in irons.

The Session Judge (G. J. Waters) in submitting the Calendar recommended that the sentence should be mitigated by the reduction of the period of imprisonment awarded to any term not less than eight years, which the Court of Foujdaree Udalut might think fit to order.

On perusal of the Calendar, the Court of Foujdaree Udalut (present G. S. Hooper, E. P. Thompson and W. A. Morehead) observed that the offence of which the prisoner had been convicted could not be viewed as a gang-robbery; the parties having secretly proceeded to the prosecutor's garden, and there begun to steal the cholam referred to in the indictment, and that, therefore, the Regulation quoted by the Session Judge was inapplicable.

The Court considered, that under the circumstances of the case the offence proved against the prisoner amounted only to a theft, and they accordingly directed the Session Judge to recall his warrant, and to sentence the prisoner to two years' imprisonment with hard labor in irons, under Section XXI. Regulation VII. of 1802, the full penalty prescribed by which provision of the Law the Court were pleased to mitigate to that extent by virtue of the authority vested in them by Section XXXV. Act VII. of 1843.

The Session Judge in his return reporting that the orders of the Court of Foujdaree Udalut had been carried into effect, urged the legality of the sentence originally passed by him, and requested that the question might be referred to the consideration of the Collective Court, and, if deemed necessary, to the Chief Judge; as he could not but consider that the order he had received "was opposed to the clear definition of the Law as admitted and always acted on, and that it must, upon insufficient grounds, bring about a total change in practice."

The Session Judge further observed that "did the opinion of the Court of Foujdaree Udalut simply involve the question whether or not theft is *de facto* to be distinguished from robbery by its be-

14th September, 1847.
Nanjau's case.

"ing *secretly* committed, there could be no doubt
"of such opinion being correct, it having been
"always recognized as just and proper," but that "in the instance
"under consideration there was not only the subsequent wounding
"or act of violence which had been repeatedly ruled to alter the
"nature of the offence; but there was the going forth armed, that
"is, to take by violence when opposed; and the adoption of the
"views entertained by the Judges would clearly introduce a change
"in forensic practice which," the Session Judge submitted, "had
"not been contemplated by the legislature."

"For instance" the Session Judge remarked, "the two persons
"who committed this offence did, and ten, twenty or thirty, other
"persons may, commence their journey or expedition *secretly*; in
"nineteen cases, in twenty perhaps they do this; that is they do
"not disturb a village, nor possibly a single person of its inmates;
"but with this fact the Law has no concern; it looks to the going
"forth and to the circumstances attendant thereon, and to the con-
"sequence which follow; and it will be obvious to the Judges, that
"if this be not persevered with, and the mere *secretly* going forth
"be considered, individuals or large bodies of men who go *secret-*
"*ly* forth armed, to take illegal possession of grain or other pro-
"perty by force and violence if necessary, must henceforth, not-
"withstanding subsequent acts of violence, be excluded from the
"charge of robbery by open violence, and become subject to some
"other form of indictment."

The Session Judge added that if the Courts of Session were careful to punish as simple thefts, crimes precisely of that character, every consideration due to the prisoner in connexion with the public safety, would be effectually preserved.

In reply to the foregoing arguments the Court of Foudaree Udalu recorded the following remarks:—

"The Court of Foudaree Udalu with reference to the observa-
"tion in para. 4 of this return, before entering upon the question
"raised by the Session Judge, will premise the remark that the
"practice formerly obtaining of the Calendars and Criminal Re-
"ports being revised by only one Judge of the Court, has been
"abolished, and that now every Calendar and every Criminal Re-
"port is reviewed by all the three Puisne Judges, and that no

14th September, 1847.
 Nanjan's case.

“ order on Calendars and Criminal Reports is
 “ ever despatched which has not received the
 “ assent and sanction of at least a majority of
 “ the Court.”

“ The Court after giving their best attention to the subject,
 “ cannot concur in the view taken of this case by the Session
 “ Judge.”

“ The Court are of opinion that the prisoner in this case was
 “ liable to the penalties indicated in Clause second, Section III.
 “ Regulation VI. of 1822, which declares that ‘ in all cases of
 “ theft, whether in a house, warehouse or other place, (not coming
 “ within the provisions of the Regulations in force for the punish-
 “ ment of robbery by open violence) and if the theft or the attempt
 “ to commit the same shall have been accompanied with an at-
 “ tempt to commit murder, or with wounding, burning, severe
 “ corporal injury, or other aggravating act of personal violence,
 “ such persons, if convicted on trial before the Court of Circuit,
 “ will be liable to the penalties prescribed in Clauses third and
 “ fourth, Section II. of this Regulation.’ The Session Judge was
 “ therefore legally competent to pass the sentence in this case,
 “ which he recommended to the Foujdaree Udalut.”

“ The whole difficulty of the question seems to arise from not
 “ sufficiently considering the nature of the offence contemplated in,
 “ and provided for by, Regulation XV. of 1803. That offence is
 “ robbery by *open violence* and such a definition cannot, in the opi-
 “ nion of the Foujdaree Udalut, apply to a case like that under
 “ consideration, in which the prisoners, two in number, entered
 “ stealthily into a field of standing grain, and the prosecutor hav-
 “ ing found them in the act of stealing the grain, and seized one
 “ of them, the latter struck him on the head with a stick he had
 “ in his hand. That there was no intention on their part to put
 “ down opposition by sheer force, seems to be clear not only from
 “ their being but two in number, but from the fact of the other
 “ thief running away when his comrade was seized by the prose-
 “ cutor, although the latter was single and apparently unarmed.
 “ The Court cannot conceive that the legislature intended that a
 “ case of this nature should be included in those very heinous
 “ crimes, to suppress which was the object of Regulation XV. of
 “ 1803.

DEVARAKONDA SUBBANNA,

Versus

AKUNURI GANGANNA.

Charge—*Highway Robbery.*

9th October, 1847.
Akunuri Gannanna's
case.

The prisoner was tried before the Session Court at Masulipatam, upon an indictment charging him, with having attacked the prosecutor's sister's son, a boy aged ten years, in a street of the town of Masulipatam and robbed him of a brass tambal, valued at Rupees 1-8-0, which was then in his hand.

Ruled by the Court of Foujdaree Udalt, that all cases of "theft or robbery from the person" in a town or village, should be designated as "snatching."

He was convicted by the Session Judge (W. Dowdeswell) in concurrence with the Mahomedan Law Officer, and sentenced to three years' imprisonment with hard labor in irons.

The Court of Foujdaree Udalt (present G. S. Hooper, E. P. Thompson, and W. A. Morehead) on perusal of the Calendar, taking into consideration the small value of the property stolen, and the absence of any other aggravating circumstances, were of opinion that the ends of justice might be sufficiently attained by the infliction of a less severe punishment than that recorded against the prisoner by the Session Judge, and they accordingly directed that the period of imprisonment awarded should be reduced to one year.

In communicating their orders for the reduction of the sentence, the Court of Foujdaree Udalt observed, that the offence committed by the prisoner, which was designated in the Calendar as "Highway Robbery by a single person," fell properly under the head of "Snatching;" and with a view to ensure greater uniformity in the Calendars in this respect in future, the Court of Foujdaree Udalt issued circular instructions to the several Judicial Officers, requiring them to enter all cases of this nature, where the theft committed is *from the person and in a town or village* under the head of Snatching, which they observed, was the name given to this offence by the Mahomedan Law.

CILENGI SHETTI,

Versus

BOYI KUNNIGADU.

Charge—House-breaking and Attempt at Theft.

20th January, 1848.
Boyi Kunnigadu's case.

The prisoner in this case was tried before the Session Court of Chittoor, upon a charge of having on the night of the 10th November, 1847, broken into the prosecutor's house, with intent to commit theft therein.

Ruled by the Court of Foujdaree Udalut that the provisions of Clause fifth, Section II. Regulation VI. of 1822, preclude the disposal by a Session Judge of any case of burglary or theft unattended with wounding, under any other provisions of the Law than Section XXI. Regulation VII. of 1802.

The prisoner was convicted by the Session Judge (W. Lavie,) in concurrence with the Mahomedan Law Officer, of the crime charged, and was sentenced to three years' imprisonment with hard labor in irons; the authority quoted for the sentence in question being Clause fourth, Section II. Regulation VI. of 1822.

Upon the Calendar of the case being submitted to the Court of Foujdaree Udalut that Court (G. S. Hooper, E. P. Thompson, and W. A. Morehead,) observed that as the offence proved against the prisoner was not accompanied with wounding, the provisions of the Law quoted in support of the sentence passed were inapplicable, and that the Law Officer having declared the prisoner liable to Ookoolut, a second question should have been propounded to remove the objections to Hud, and the prisoner should then have been sentenced to the punishment prescribed by the provisions of Section XXI. Regulation VII. of 1802, and an application submitted to the Foujdaree Udalut for a reduction of the prescribed sentence to such an extent as the Session Judge might have thought proper.

The Court of Foujdaree Udalut accordingly directed that the Calendar should be returned to the Session Judge, in order to the adoption by that Officer of the course above noted.

The Session Judge urged a reconsideration of the orders of the Court, contending that the sentence passed by him was legal; certain former convictions recorded against the prisoner having, the

20th January, 1848.
Boyi Kunningadu's case.

Session Judge urged, rendered him punishable for the offence proved against him in this case, under the provisions of Clause fourth, Section II. Regulation VI. of 1822.

To this the Court of Foujdaree Udalut observed, that the previous convictions to which the Session Judge adverted, had led to the commitment of the prisoner for trial before the Court of Session; as otherwise the offence charged against him would have been punishable by the Sub-Criminal Court.

The Court remarked that in Clause fifth of the section quoted, it was expressly laid down, that nothing in the preceding Clause shall be construed to authorize an enhancement of the penalties declared in the Regulations in force for burglary or theft, when not accompanied with wounding or other corporal injury, and that therefore it was obvious that the offence with which the prisoner in this case had been convicted, viz., House-breaking with an attempt to steal, and for which he was committed to the Court of Session, in consequence of his previous convictions, could only be punished under the provisions of Section XXI. Regulation VII. of 1802;—the Regulation in force for the punishment of the offence charged previous to the enactment of Regulation VI. of 1822.

In the answer given by the Mahomedan Law Officer to the second question propounded by the Session Judge under the orders of the Foujdaree Udalut, the Court observed that the objections to Hud were stated, and also the specific punishment to which the prisoner would have been liable if he had been convicted on full legal evidence; and the Court accordingly directed that the Session Judge should proceed according to the rule laid down in Clause third, Section II. Regulation XV. of 1803, to pass sentence upon the prisoner under the provisions of Section XXI. Regulation VII. of 1802, after which, the Court remarked, it would be competent to the Session Judge to apply for a mitigation of the prescribed punishment to such extent as he might think proper.

The prescribed sentence of seven years' imprisonment with hard labor in irons was accordingly passed upon the prisoner, the period of imprisonment adjudged being eventually reduced with the sanction of the Court of Foujdaree Udalut to three years.

GOVERNMENT,

Versus

PANDARATIL KONDI MENON and 22 others.

Charge—Concealment of Murder, and Abuse of Police Authority.

26th February, 1848.

The case of Pandaratil, Kondi Menon and 22 others.

An illustration of the necessity of obtaining, if possible, in all cases of murder the opinion of a Medical Officer upon inspection of the corpse.

The prisoners were tried before the Session Court of Calicut, upon an indictment charging them with having been accessaries after the fact to the murder of one Raman by recording or signing certain false inquest papers, depositions, &c., in which the fact of the deceased's private parts having been mutilated, and other suspicious appearances on the body were omitted to be mentioned.

An additional count was preferred against the first five prisoners—Police Officers—charging them with gross abuse of authority in having concealed the facts adverted to in the first count of the indictment.

It appears that on the 25th of November, 1847, the body of the deceased was found in a tank in a garden of the Palace belonging to the 5th Rajah of Calicut, and that on the following day a report of the circumstance was forwarded by the Adhikary of the Amsham, in which abrasion of the skin on the nose and penis and an injury to the eye were the only hurts mentioned, as being discoverable on the corpse; accidental drowning being stated as the supposed cause of death.

The 1st prisoner, a Subordinate Officer of Police, was immediately deputed to hold an inquest; and in the inquest report, which was signed by all the prisoners charged in the indictment, the report of the Adhikary as to the cause of death was confirmed, and it was distinctly stated, that with the exception of a hurt on the crown of the head, which was supposed to have been received by the deceased in falling into the tank, there were no marks of violence visible, or any thing to create suspicion of foul play.

The body was interred by order of the Sub-Officer immediately after the inquest; but two days afterwards, on the 27th November, an anonymous letter was received by the Magistrate, in which it was intimated that the deceased had been murdered by cer-

26th February, 1848.
The case of Pandaratil
Kondi Menon and 22
others

tain servants in the 5th Rajah's Palace, in consequence of his having been suspected of a theft. This communication was followed by another, to the same effect, on the 29th; and the Magistrate immediately instituted an inquiry, the result of which led him to suspect that the allegations contained in the anonymous letter received by him had some foundation, and induced him to order the disinterment of the body of the deceased.

When the body was disinterred, in addition to other marks of violence, two severe contusions were apparent on the head, and the penis was found to have been entirely cut off.

The tank or pit, in which the body had been found, being in the immediate neighbourhood of that part of the Rajah's Palace, in which the ladies of the family were residing, and it having been ascertained that the deceased, a young man of twenty years of age, who had been represented in the inquest report, and by the Rajah's servants, to have been a wandering beggar, accustomed to frequent the Palace to receive alms, had been in reality a menial servant in the Palace, it was supposed that the deceased had been murdered, in consequence of his having been discovered in a criminal intrigue with one of the ladies of the Palace, and the Rajah was called upon by the Magistrate to lend his aid in discovering the murderers.

The application, however, was unsuccessful; the Rajah denying all knowledge of the matter and professing his inability to do any thing towards the discovery of the crime.

The falseness of the inquest report being established by the appearance of the corpse, when disinterred, the prisoners were committed for trial, as accessaries after the fact, in having misrepresented the real state of the corpse, with a view to the concealment of the murder which had been committed.

Upon the trial it was alleged by the prisoners in their defence that the penis had been cut off, and the wounds on the head inflicted, subsequent to the disinterment of the body, and that their report of its condition when it was inspected by them was correct.

It was, however, clearly established by the evidence of the Zillah Surgeon, by whom the body was dissected after it had been exhumed, corroborated by the opinion of the Superintending Surgeon, given upon oath, with reference to the certificate and evi-

26th February, 1848.
The case of Pandarutil
Kondt Menon and 22
others.

vidence of the former Officer, that the wounds on the head must have been inflicted, and the penis cut off, *during life*, "because," the Zillah Surgeon stated, "the integuments of the head and neck (particularly to the left side and back part of it) had blood extravasated in its substance" and "the corpora cavernosa were retracted considerably, which would not have been the case, had the excision (of the penis) been subsequent to death."

The Acting Session Judge (T. W. Goodwyn) considered the evidence sufficient to the conviction of all the prisoners charged; and the trial was accordingly referred for the final judgment of the Court of Foujdarees Udaltut (present E. P. Thompson), by whom the prisoners were severally convicted and were sentenced respectively to imprisonment, the 1st for five years, the 2nd and 3rd for two, and the 4th for one year with hard labor in irons, and the remaining prisoners to six months' imprisonment with labor without irons.

The 5th, 10th, and 18th prisoners died in Jail before the final sentence was passed.

P. SESIIV,

Versus

1. VENGANNA,

2. RAMAYA,

3. KESAVULU.

Charge—*House-breaking and Theft.*

29th May, 1848.
The case of Venganna
and 2 others.

The prisoners were charged before the Session Judge of Cuddapah with having on the night of the 17th March, 1848, broken into the prosecutor's shop and stolen therefrom gold and silver jewels, cloths, ready money, &c., valued at Rupees 310-4-0.

The Mahomedan Law Officer in his second Futwa convicted the prisoners of the crime charged and declared them severally liable to Ookoobut, or discretionary punishment; Hud being barred in consequence of the absence of full legal evidence under the Mahomedan Law.

Ruled by the Court of Foujdarees Udaltut that it is not competent to a Session Judge, to dispose of a case of House-breaking and Theft, unattended by wounding, under the provisions of Clause

29th May, 1848.
The case of Venganna
and 2 others.

second, Section II. Regulation XV. of 1803; it being incumbent upon him to dispose of all such cases, under Section XXI. Regulation VII. of 1802, removing by a further question any objections which may have been stated in the Law Officer's Futwa as a bar to Hud, and subsequently applying to the Foujdaree Udalut for mitigation, if the prescribed punishment be considered too severe.

The Session Judge (E. Maltby,) concurring in the finding, sentenced the 1st and 2nd prisoners to imprisonment with hard labour in irons for four years, and the 1st to receive in addition seventy-five lashes of a cat-o'-nine tails, on the ground of his bad character.

On the 3rd prisoner, a lad of seventeen or eighteen years of age, the Session Judge passed sentence of two years' imprisonment with labour without irons, considering the addition of irons "unsuited to one of his small size."

The Court of Foujdaree Udalut (present G. S. Hooper, E. P. Thompson and W. A. Morehead) upon the Calendar being laid before them, observed, that as discretionary punishment was awarded in the second Futwa delivered by the Mahomedan Law Officer, in consequence of the evidence not being such as the Mahomedan Law requires for a sentence of Hud, the Session Judge should, under Clause third, Section II. Regulation XV. of 1803, have required the Law Officer to declare by a third Futwa to what specific punishment the prisoner would have been liable under that law, if he had been convicted by full legal evidence.

The Court of Foujdaree Udalut accordingly over-ruled the sentence passed by the Session Judge and directed that he should propound a third question to the Mahomedan Law Officer to the above effect, and should then proceed to pass sentence under the provisions of Section XXI. Regulation VII. of 1802; it being, they observed, competent to the Session Judge if he considered the sentence prescribed by Section XXI. Regulation VII. of 1802, to be too severe for the offence of which the prisoners had been respectively convicted, to apply to the Court of Foujdaree Udalut for a mitigation under Section IV. Regulation I. of 1825.

This course having been adopted, the sentences passed were subsequently reduced by the Court of Foujdaree Udalut to the period of imprisonment originally awarded by the Session Judge.

In his return to the precept of the Court of Foujdaree Udalut conveying their preliminary orders in the case, the Session Judge submitted the following statement in explanation of the grounds upon which he thought that the offence of House-breaking and

29th May, 1848.
The case of Venganna
and 2 others.

Theft without wounding was specially provided for by the Regulation, and that it was therefore his duty to pass sentence on a Futwa as signing Ookoobut, under Clause second, Section II. Regulation XV. of 1803.

“ Regulation VI. of 1822, appeared framed to provide for all cases of House-breaking under its different forms, and Clause second and fourth of Section II., when taken together, seemed to show that a discretionary power of punishment, within fixed limits, was given to a Session Judge in all cases where he is authorized to pass sentence. Clause fifth, Section II. was interpreted not to forbid a Session Judge passing sentence under that Regulation in a case of House-breaking without corporal injury, but merely to enact, that in passing sentence under the preceding Clause, such penalties as might be in force for burglary or theft, should not be enhanced in cases where there was no wounding or corporal injury. The Session Judge thought he was therefore acting legally in passing a sentence not exceeding the limit, which the Analysis of Mahomedan Law and the general Regulations assign to ordinary Theft and Burglary.”

“ The Session Judge was led to take this view from thinking, that the legislature could not have intended to give Session Judges a less discretionary power in minor cases of House-breaking, than they have under Clause fourth, Section II. Regulation VI. of 1822, in the more aggravated cases. He was also under an impression that the Superior Court had viewed the law in the same light, in order that the consistency of the general Regulations might be preserved, as House-breaking is entered under its different forms in the tabular statement of offences furnished for the guidance of the Criminal Courts, as one of the crimes for which the Regulations specially provided.”

It appears that no further orders were passed by the Court with reference to the Session Judge's explanation, and the practice of disposing of all cases of Burglary or Theft cognizable by the Session Courts, under the provisions of Section XXI. Regulation VII. of 1802, still continues in force.

SHALLEEMA,

Versus

1. MADIGA POTURAZU KARRA TIPPADU,
2. KOMMU HUSSAINIGADU,
3. VENKATAREDDI.

Charge—Murder.

30th June, 1848.

The Case of Madiga Poturazu Karra Tippadu and others.

This trial was referred by the Agent to the Governor of Fort St. George at Kurnool, with a recommendation that 1st prisoner whom he considered to be convicted upon circumstantial evidence of the murder of the prosecutrix's husband should be sentenced to suffer death.

The Court of Foudaree Udalt dissenting from the Agent in his appreciation of the evidence acquitted the 1st prisoner, and directed that he and the 2nd prisoner who had been placed by the Agent under a requisition of security should be unconditionally released.

On the day after the sentence of the Foudaree Udalt was despatched, a letter was received from the Agent requesting that they would defer passing sentence, another person having come forward and avowed himself as the perpetrator of the murder for which the prisoners had been tried.

The real murderer was subsequently tried and convicted and sentenced to be hanged.

The prisoners were tried before the Agent to the Governor of Fort St. George in Kurnool, upon an indictment charging them with having at about half past 4 o'clock, A. M. on Saturday, the 6th May, 1848, struck the prosecutrix's husband Shali Sahib, an inhabitant of Koddapalle Dhoni Talook, with an hatchet or other cutting instrument over the left eyebrow on the temple, while he was sleeping on a cot in the yard in front of his house, and thereby then and there caused his death.

The facts of the case are thus stated in the letter of the Agent referring the trial for the final judgment of the Foudaree Udalt.

"The deceased Shali Sahib resided in a distinct portion of the house of his father Venkatarreddi (3rd prisoner) a Ryot of Koddapalle which is a hamlet of Nurnoor, a large village in the vicinity of Kurnool."

"At a very early hour in the morning of the day upon which the murder was committed, the deceased's father, as was his wont, came to the part of the house occupied by the deceased to arouse some of his laborers, in order to send them with the ploughing cattle to work."

"The laborers, who had slept in a cattle shed within the yard, inside of which were Shali Sahib's apartments, got up and passed out; one of them observing in the obscurity of the morning that Shali Sahib was then lying

30th June, 1848.
The case of Madiga Poturazu Karra Tippadu and others.

“on a cot in front of his house at the spot
“which he usually occupied at night, and which
“was only at a few feet distant from the cattle
“shed.”

“They were accompanied by Venkatarreddi, who subsequently
“busied himself in calling and dispatching to the fields other labourers, who lived in another part of the village.”

“At daybreak (the 1st witness) one of Shali Sahib’s domestics, who had slept inside the house close by Shali Sahib’s cot,
“arose and discovered his master in the agonies of death from
“a large wound on the left temple, which appeared to have been
“but quite recently inflicted with a hatchet. His cries awoke a
“female relative of the deceased (2nd witness), who had also slept
“a few feet distant from Shali Sahib, and who came to the cot-
“side only in time to give deceased a little water and to hear his
“death rattle.”

“The alarm being raised the villagers assembled; among the
“rest Venkatarreddi, who was not far distant, and by whom information of the occurrence was immediately despatched to the village authorities at Nurnoor, a mile and a half from Koddapalle.”

It appears that the suspicions of the villagers were immediately directed to the 1st prisoner, in consequence of his having been beaten and kept in restraint under the orders of the deceased two days previous to that on which the murder occurred, for the purpose of compelling him to pay a debt he owed to the deceased; with reference to which circumstance the 1st prisoner on the day immediately preceding the murder had proceeded to Nurnoor, and complained to the Curnums of that place of the treatment he had received.

It was stated by the wife of the 1st prisoner, that the 2nd prisoner had been in company with her husband during the greater portion of the night immediately preceding the murder, that they together left the house of the former at a very early hour in the morning, and after being absent for a period returned about the time that it appeared from the evidence of the persons who slept at the house of the deceased, that the murder must have been committed.

It appeared that shortly after their return, while they were seated on a cot in front of the 1st prisoner’s house, the 9th and 10th

30th June, 1848.
The case of Madiga Poturazu Karra Tippadu and others

witnesses passing by inquired of the 1st prisoner the result of the complaint which he had gone on the previous day to prefer before the village Curnums at Nurnoor, in reply to which the 1st prisoner was stated to have made use of an expression, which was afterwards considered to refer to the murder of the deceased.

These witnesses when examined before the Agent differed in the account of the words of the expression in question, the 9th witness stating that it was, "what more will they inquire into, we have come having given the blow," while the 10th witness described the prisoner to have said "what will they inquire into, we have come having struck so that the sleeping person shall be asleep;" both these accounts being slightly different from their statement when examined by the Amildar, when the reply they attributed to the 1st prisoner as having been given by him on the occasion in question was "who will make inquiry about my complaint, we have caused the sleeping person to be asleep."

Some days after the murder was committed, an instrument used by chucklers for cutting leather was found on the roof of the 1st prisoner's house, which, when applied to the fracture in the skull of the deceased, whose body was disinterred for the purpose, was found exactly to correspond with the opening in the frontal bone, which had been severed by the fatal blow.

It does not distinctly appear from the record, upon whose information the 2nd and 3rd prisoners were taken into custody, but it may be gathered that the apprehension of the 2nd prisoner was in consequence of the statements of the wife of the 1st prisoner (the 4th witness) and of the 9th and 10th witnesses to whose evidence reference has already been made; while the 3rd prisoner, the father of the deceased, was apparently taken up on suspicion, in consequence of his having been seen to remove from the body of the deceased, immediately after he expired, certain silver ornaments and a key which were on the deceased's person when he was killed.

The prisoners each pleaded not guilty; the 1st prisoner stating in his defence that on a search of the 3rd prisoner's house, of four hatchets said to belong to him one was found to be missing (another having been substituted in its place), with which he submitted that the deceased might have been murdered by his father

30th June, 1848.
The case of Madiga Poturazu Karra Tippadu and others.

the 3rd prisoner, a charge which, he stated, he had preferred when the search in question took place.

With reference to the 1st prisoner's statement on this point, a Taliari, who was present at the search of the 3rd prisoner's house, and the Surchasum who conducted it were examined, both of whom corroborated the 1st prisoner's allegation that one of the four hatchets found in the house was said, at the time, to have been substituted for another belonging to the 3rd prisoner which was not forthcoming. The Taliari denied that the 1st prisoner had made any remark when this circumstance was mentioned, but the Surchasum stated that on the alleged change of hatchets being mentioned the prisoner called out at once, "bring the hatchet which is not here, that is the bloody hatchet," meaning to say that it was the hatchet with which Shali Sahib had been murdered, but that he said nothing afterwards, nor did he accuse any person in particular of having committed the murder.

For reasons, which will hereafter appear, it is important to remark the nature of the defence set up by the 1st prisoner.

The 2nd prisoner on his apprehension on the day of the murder admitted to the 13th witness a Talook Peon, by whom he was taken into custody, his having been in company with the 1st prisoner during the greater portion of the previous night, and having slept on a cot in the verandah of the 1st prisoner's house, and stated that in the course of the night some time before daylight, the 1st prisoner got up from his cot and left the house, returning at cock-crow, when he aroused his wife who was sleeping in another cot close by, and took her into an inner room where they had some conversation in a low tone of voice, the purport of which the 2nd prisoner did not hear, after which the 1st prisoner's wife returned to her cot, and the 1st prisoner himself laid down on the floor and slept till daybreak.

On the trial the 2nd prisoner made no mention of the circumstances above detailed in the statement made by him to the Talook Peon, of which it is to be observed that it differs materially from that given by the 4th witness, the 1st prisoner's wife, who deposed to his (the 2nd prisoner) having quitted the house with her husband on the occasion in question.

30th June, 1848.
The case of Madiga Poturazu Karra Tippadu and others.

The defence made by the 2nd and 3rd prisoners was confined to a simple denial of the charge.

The Agent (H. D. Phillips) acquitted the 3rd prisoner unconditionally, and considering, that though the evidence was insufficient for the conviction of the 2nd prisoner, suspicion attached to him, placed him under a requisition of security.

The Agent considered the evidence sufficient for the conviction of the 1st prisoner, and referred the trial for the final judgment of the Foudaree Udalt, with a recommendation that the 1st prisoner should be sentenced to suffer death, recording his grounds for the opinion formed by him in the following terms.

"The villagers are shown by the record to have immediately formed an opinion that the murder had been perpetrated by the 1st prisoner, who two days previously had been pressed by Shali Sahib for payment of a debt, on account of which, as he could not discharge it, Shali Sahib had kept him a whole day under restraint and had also caused him to be beaten."

"The best testimony in respect to the beating is not conclusive, but in all probability evidence has been withheld by the individuals (17th and 18th witnesses) who would appear to have acted under Shali Sahib's orders from an idea that they would themselves be implicated by admissions on the point when examined in my Court."

"The statements of the Nurnoor Curnums render it however sufficiently clear to my mind that offence had been given by the 1st prisoner to the deceased, and that the irritation which resulted from it, was the cause of his going to Nurnoor to make his complaint against Shali Sahib."

"It is also clear to my mind that with the exception of the 1st prisoner, there was no other person at Koddapalle on such terms with the deceased, as to justify the supposition that he could have been the perpetrator of the murder; the Curpum of the village (19th witness) who is the party likely to have the best information on such a matter, declaring that Shali Sahib had no enemies there."

"Suspicion of the murder being thus concentrated on the 1st

30th June, 1848.
The case of Mādiga Poturazu Karra Tippadu and others

“prisoner, it remains for consideration whether the evidence adduced, circumstantial as it is throughout, is sufficient for his conviction.”

“I believe it difficult to peruse the record of the trial without feeling that the murder was the work of some one acquainted with Shali Sahib’s habits and possessed of a knowledge of his premises, and it is clear that such acquaintance and knowledge was possessed by the 1st prisoner. It is also my belief that the murderer must have awaited the opportunity afforded him by the going out to work of the ploughmen at which time it is satisfactorily shown that the 1st prisoner had left and was away from his own house under circumstances creating the strongest suspicion. It is further to be remarked that, after the 2nd prisoner had been arrested and was being brought before the Amildar, he stated to the 13th witness that on the night preceding the murder he had slept at the 1st prisoner’s house and had observed that at a very early hour of the morning the 1st prisoner left his cot, went out, remained absent for a period and returned about the time when, as the evidence shows, it would appear that Shali Sahib had received the fatal blow.”

“I am aware, that although given before he was put on his trial, the above statement of the 2nd prisoner may be objected to as coming from an accomplice, but it receives very satisfactory corroboration from the 1st prisoner’s own wife, who makes a similar statement asserting however that the 2nd prisoner accompanied her husband, stayed out, and returned with him.”

“The expressions which the 1st prisoner is shown to have used in reply to the question of the 9th and 10th witnesses regarding the result of his complaint to the Nurnoor village authorities are such as would naturally have been uttered by an assassin, still under the excitement produced by the blow which had rid him of a person by whom he had been injured or maltreated. No other inference can be drawn from them than that they had reference to some unlawful act, and unless clearly explained by the party from whose mouth they proceeded, I consider they should be regarded as seriously criminating him, and as forming powerful presumptive evidence.”

“The discovery on the roof of the 1st prisoner’s house of an instrument which is shown to have belonged to him; with which

30th June, 1848.
The case of Madiga Poturazu Karra Tippadu and others.

" the Assistant Surgeon is of opinion, with myself, that the murder may have been perpetrated ; and which, when applied to the fracture in the skull of the deceased, exactly corresponds with the opening in the thicker portion of the frontal bone, are circumstances, I submit, that forbid any doubt of the prisoner's guilt, when taken in connection with the other facts of the case."

" The conduct of the 1st prisoner in attempting to criminate the father of the deceased, by insinuating that an hatchet, which had accidentally been exchanged, was that used to murder the son, appears to me to be an additional reason for convicting the 1st prisoner, for unless he had been guilty, it is obvious he could have had no interest in fixing on another the responsibility of his own misdeed."

" I therefore feel it my duty to recommend that the 1st prisoner Madiga Poturazu Karra Tippadu be sentenced to undergo the extreme penalty of the Law."

The Court of Foujdaree Udalt (present E. P. Thompson and W. A. Morehead) on perusal of the record dissented from the Agent in their appreciation of the evidence, which they considered too weak and inconclusive for the conviction of, or even for a requisition of security from, any of the prisoners charged.

They accordingly acquitted the 1st prisoner, and directed his unconditional release, and issued orders for the annulment of the requisition of security under which the 2nd prisoner had been placed.

The grounds recorded by the Judges of the Foujdaree Udalt, by whom the trial was disposed of, for differing so entirely from the conclusion at which the Agent had arrived, had reference to the insufficiency of the proof of the alleged cause of malice, by which it was supposed that the prisoner had been actuated in the commission of the crime charged against him, or of the identity of the iron instrument found on the roof of the said prisoner's house, with that with which the murder was committed ; on both of which points the Judges considered, that the evidence was too defective to enable them to draw from it any certain conclusion of the existence of the facts alleged.

On the one point they observed, that " the best testimony in respect of the beating" was admitted by the Agent to be inconclusive, this fact having been denied by the persons (17th and

30th June, 1848.
The case of Madiga Poturazu Karra Tippadu and others.

18th witnesses), by whom it was alleged that the beating had been inflicted under the orders of the deceased; and in regard to the instrument discovered on the roof of the 1st prisoner's house, the Judges remarked that the account of that discovery was extremely unsatisfactory, the instrument in question not having been found for thirteen days after the murder took place, during which period there was nothing in the record to show that the houses of the prisoners had been examined; wells and hills and other places having been searched in the interval, although "the house and premises of the prisoners would naturally present themselves as the chief places where the search ought first to have commenced."

The Judges further observed that the instrument itself, which was forwarded with the record for their inspection, was a diminutive axe's head, and that without the aid of a shaft it appeared very doubtful whether such a wound as the deceased was represented to have received, could have been inflicted by the hand alone; "the frontal and temporal bones,"—the strongest bones in the head, and "the integuments and muscles having been cut through into the very substance of the brain."

The Judges laid no stress on the correspondence between the instrument found, and the cut through the bones in the head of the deceased; the edge of the instrument being of the same size as that of most axes in use.

On the day after the sentence of the Court of Foujdaree Udalut was despatched, a letter was received from the Agent, dated the 25th June, requesting that the Judges would suspend their judgment in the case, in consequence of information which had just reached him, that an inhabitant of the deceased's village had that morning surrendered to the Police, acknowledging that he had committed the murder for which the three prisoners in the case referred to the Foujdaree Udalut had been tried. The individual in question, who was a laborer named Sanjivigadu, and in the habit of working for the 3rd prisoner, had given evidence as 6th witness on the prisoner's trial, having been one of the persons who had been despatched on the morning of the murder by the 3rd prisoner with his ploughing cattle to his fields, and who had deposed that in passing to the cattle shed to take out the

30th June, 1848.
The case of Madiga Poturazu Karra Tippadu and others.

bullocks, and in returning from it with them, he had seen the deceased sleeping on his cot. He stated in his confession that he had been converted to Mahomedism by the deceased, in consequence of which he became excluded from his caste; that the deceased had promised to get him married, but had failed to do so, and shortly before the murder had quarrelled with him and driven him from his house, in which he had been in the habit of living for some time previously; that he had in consequence formed the intention of murdering the deceased; that on the night preceding the murder, the marriage of his brother having taken place, the reflexions which this event suggested to him exasperated him to such a degree, that he formed the resolve of immediately carrying his previous design into execution, and with this view in the course of the night he took secretly from the house of one Ankagari Busama a carpenter's adze, which had been left there by its owner, and which he concealed in the back-yard of his own house; that early in the morning he was called by the deceased's father to go to his work, and accompanied him with one Sunkadu to his bullock shed, whence, after they had been there for some time occupied in feeding the bullocks, he took the opportunity of Venkatareddi and Sunkadu quitting the shed, to go to his house for the adze, and returning with it to the yard, where he found the deceased still asleep on his cot, struck him a blow on the left temple with the adze, which he afterwards threw away into a heap of firewood in the backyard of the house of one Timmareddi.

This confession having been confirmed by the deponent before the Agent, and corroborated by the evidence of Sunkadu who deposed to the prisoner's having remained after him in the cattle shed, and by the testimony of the carpenter who had lost his adze, and of other witnesses who deposed to the prisoner's loss of caste in consequence of his conversion to Mahomedism by the deceased, and to the quarrel which had recently taken place between them; the prisoner Sanjivigadu was convicted by the Court of Foudaree Udalut, in concurrence with the Agent, of the murder of Shali Sahib, and was sentenced to undergo the extreme penalty of the Law. It was stated in evidence on the trial of Sanjivigadu that he had been in the first instance suspected by Venkatareddi the father of the deceased, and had been actually charged

30th June, 1848.

The case of Madiga Poturazu Karra Tippadu and others.

by him with having committed the murder, but that in consequence of his declaration of his innocence and the suspicions which were expressed by the villagers regarding the 1st prisoner in the former case, no mention was made before the Amildar or before the Agent of the suspicion which had been in the first instance considered to attach to the person who subsequently confessed the crime.

The instrument with which the murder was committed was not found.

GOVERNMENT,

Versus

- | | |
|-------------|------------------------|
| 1. RAMAYI, | 3. ARUNACHALA PUNAYAN, |
| 2. SWARNAM, | 4. VAIDYALINGAM. |

Charge—*Conspiracy.*

3rd January, 1849.

The case of Ramayi and others.

Sentence passed upon certain persons charged with the crime of conspiracy in having given false evidence, not upon oath, in support of a false complaint, over-ruled by the Court of Foujdaree Udalt, on the ground that it was illegal; the prisoners not having been the authors or instigators of the false complaint in support of which their false evidence was given. In all cases in which different prisoners are charged with different offences, they should be tried separately and entered separately in the Criminal Reports.

The prisoners were tried before the Sub-Judge of Combaconum (G. T. Beauchamp) upon a charge of "having at Vadavannyam in the Titrapundi Talook conspired together to injure Murugan, son-in-law of the 1st, and husband of the 2nd prisoner," and his 2nd wife Visalakshi by falsely charging them with having on the night of the 1st August, 1848, bound and beaten the 2nd prisoner, and abused and beaten the 1st prisoner, in furtherance of which conspiracy the 1st and 2nd prisoners preferred wilfully false and malicious charges against the said Murugan and others before the Head Assistant Magistrate of Tanjore and Police Ameen of Titrapundi on the 29th August, and the 12th September, 1840, and the 3rd and 4th gave evidence in support of the said complaint

before the said Police Ameen on the 12th and 15th September, 1848."

The 1st prisoner was further charged with having presented a

3rd January, 1849.
The case of Ramayi and
others.

wilfully false and malicious complaint to the
above effect before the Police Ameen of Titra-
pundi.

The prisoners were convicted by the Sub-Judge of a conspiracy, and were sentenced respectively to imprisonment for various periods under the provisions of Section VII. Regulation X. of 1816.

In a following case four other prisoners tried on a similar charge, were sentenced, the 1st to ten days' imprisonment under Section II. Regulation IX. of 1832, and the 2nd, 3rd, and 4th to three months' imprisonment under the provision of Section VII. Regulation X. of 1816.

In another case also on a similar charge two prisoners were sentenced to one month's imprisonment, one under Section II. Regulation IX. of 1832, and the other under Section III. Regulation X. of 1816.

And in another case tried by the same tribunal;—the Sub-Court of Combaconum, five prisoners were committed for trial before the Session Court on a charge of conspiracy.

From the abstracts of the charges as entered in the reports of the case above referred to, it appeared that the conspiracy with which the prisoners had been charged, consisted of false complaints preferred before Head of District Police by certain of the prisoners and supported by the evidence of the others, and that the parties by whom the complaints were preferred, had been punished under the provisions of Section II. Regulation IX. of 1832; the witnesses having been disposed of under Section VII. Regulation X. of 1816.

The Court of Foujdaree Udalut (present G. S. Hooper, E. P. Thompson and W. A. Morehead), inferred that in adopting this course the Sub-Judge had been guided by the instructions conveyed in the proceedings of the Court of Foujdaree Udalut held upon a letter from the late Session Judge of Combaconum, under date the 26th February, 1845, submitting the annual Session Report for the year 1844, wherein, with reference to certain remarks recorded by that Officer regarding the absence of any provision for the punishment of the authors and instigators of false complaints, it was observed by the Court of Foujdaree Udalut, that under the Mahomedan Law parties proved to be concerned in the instiga-

3rd January, 1819.
The case of Ramayi and
others.

tion of false charges may be punished for conspiracy, although the provision of Regulation IX. of 1832, would not be applicable to them.

The Court however were of opinion that the Sub-Judge had mis-conceived the intent of the observation above quoted, if he considered that it was thereby intended to sanction the punishment of witnesses giving evidence in support of a false complaint upon a charge of conspiracy, unless the parties charged were proved to have been the authors and instigators of the false complaint.

"It would seem," the Court observed, "to be evident that this was the intention of the Court in recording the declaration above referred to, when the rule laid down in Circular Order No. 57, is taken into consideration, wherein it is declared that Regulation IX. of 1832, does not apply to witnesses giving false evidence, but only to the party by whom the charge shall have been preferred, and that the punishment of persons giving false evidence not upon oath cannot be considered legal without a special provision rendering the act a criminal offence, and it is to be inferred that the terms of the Circular Order in question were not overlooked by the Court of Foujdaree Udalt, in issuing their instructions above adverted to."

The Court of Foujdaree Udalt therefore decided, that the punishment of witnesses giving false evidence, not upon oath, is illegal; unless they can be proved to have been the authors or instigators of the false complaint, in support of which their evidence has been given; in which case, as above observed, they would be punishable for conspiracy under the provision of the Mahomedan Law; and the Court accordingly directed that the 3rd and 4th prisoners named in the indictment which heads this report, and the other prisoners in the other cases referred to, who not having preferred or instigated any of the false complaints adverted to, had been treated as guilty of conspiracy upon the ground of their having given evidence not upon oath in support of those complaints, should be severally unconditionally released.

The Court of Foujdaree Udalt further directed that all cases in which different prisoners were charged with different offences, should be tried separately, and entered separately in the Criminal Reports, according as the offences charged might be separate and distinct.

RAMAN NAIR,

Versus

1. KUPPAN,
2. CHUMI PATTAR,
3. VETTI PATTAR,
4. SUBRAMANI PATTAR.

Charge—*Arson.*

24th March, 1849.

The case of Kuppen and others.

It is not competent to an Officer of the Magistracy in a case of Arson to order a requisition of security under the provision of Clause first, Section IV. Regulation II. of 1822, the crime of Arson not being punishable on conviction by the Magistracy.

The prisoners in this case were charged before the Head Assistant Magistrate of Malabar (W. Robinson) with having on the night of the 21st February, 1849, set fire to the prosecutor's house; and the 1st prisoner was ordered by the Head Assistant Magistrate to produce two securities in Rupees 25 each for his good behaviour and appearance, when required, for the period of one year, or in default to be imprisoned for that period under Clause first, Section IV. Regulation II. of 1822; the other prisoners having been unconditionally released.

The Court of Foujdaree Udalt (present G. S. Hooper, E. P. Thompson and W. A. Morehead) upon perusal of the report of the case, as entered in the Monthly Criminal Reports, observed, that the requisition of security under which the prisoner had been placed, was illegal, the Head Assistant Magistrate not being competent to pass sentence, on conviction, for the offence with which the prisoner was charged.

The Court remarked, that if that Officer considered that strong suspicion attached to the prisoner in question of having committed the offence laid to his charge, it was his duty to commit the prisoner to the Criminal Court under Clause second, Section XXIV. Regulation IX. of 1816, and they accordingly directed that the requisition of security in this case should be annulled.

RAMASAMI,
Versus
 MUTTANNA CHARI.
 Charge—*Theft*.

8th May, 1849.
 Muttanna Chari's case.

All cases of "receiving stolen property" deemed deserving of a more severe punishment than the Magistracy can inflict under Regulation IX. of 1816, are punishable by the Magistracy under Section VII. Regulation X. of 1816, provided the theft, in the commission of which the property may have been obtained, be punishable under the latter enactment.

The prisoner was charged before the Joint Magistrate of Salem, with having on the night of the 10th March, 1849, stolen from the prosecutor's house, a silver jewel called "Sejjay" valued at Rupees 8, and with having defaced it by bruising it; and on conviction was sentenced by that Officer, to six months' imprisonment with hard labor in irons, under Section VII. Regulation X. of 1816.

An appeal having been preferred from the foregoing sentence to the Acting Session Judge of Salem, (E. Story), that Officer recorded his opinion that the charge of "theft" was not established against the prisoner, but that, as it was evident from the prisoner's defence alone, that "the prisoner was knowingly in possession of stolen property without restoring it to the owner," he should have been sentenced under Clause fourth, Section IV. Regulation VI. of 1822, or committed to the Sub-Court to take his trial for disguising the appearance of an ornament, under Section IX. Regulation XIII. of 1832.

The Joint Magistrate (F. N. Maltby) doubted the correctness of the view of the case taken by the Acting Session Judge, and was of opinion that the charge of theft was fully borne out by the evidence for the prosecution, and as no specific orders for his guidance were laid down in the proceedings of the Acting Session Judge, he referred the case through the Magistrate and Session Judge for the instructions of the Court of Foujdaree Udalut; submitting his opinion of the sufficiency of the evidence in support of the charge of theft, and requesting, that in the event of the Court of Foujdaree Udalut dissenting from this opinion, he might receive their instructions in regard to the disposal of the case; as he did not consider that the Magistracy were competent to take cognizance of cases of

8th May, 1849.
Muttanna Charri's case

receiving stolen property under the enactment cited by the Acting Session Judge.

On perusal of the papers submitted for their consideration, the Court of Foujdaree Udalut (present G. S. Hooper, E. P. Thompson and W. A. Morehead) concurred with the Joint Magistrate in deeming the charge of "theft" to be fully borne out by the evidence adduced, and they accordingly directed, that the sentence recorded against the prisoner should remain undisturbed.

In regard to the powers of the Magistracy to punish receivers of stolen property, the Court of Foujdaree Udalut observed, that under the construction of the Regulation recorded in the Circular Order of the Foujdaree Udalut, dated 26th November, 1822, Magistrates were authorized to dispose of petty offences of this nature under Section XXXIII. Regulation IX. of 1816, and that the powers of the Magistracy under Regulation IX. of 1816, having been by Section VII. of 1813, extended to the powers vested in the Criminal Judges under Section VII. Regulation X. of 1816, under which enactment Criminal Judges, previous to the promulgation of Regulation VI. of 1822, punished all cases of receiving stolen property which were then cognizable by them, the Court considered that under this enactment the Magistracy were empowered to dispose of all cases of receiving stolen property, deemed deserving of a more severe punishment than they could inflict under Regulation IX. of 1816, provided there were no circumstances attendant upon the commission of the theft of the property so received, which placed the original offence beyond the provisions of Section VII. Regulation X. of 1816.

BANDU SAHIB,

Versus

MUNIYAN *alias* MUNISAMI.

Charge—*Murder.*

3rd July, 1850.
The case of Muniyan
alias Munisami.

Prisoner convicted upon strong circumstantial evidence of the murder of a fellow-servant was sentenced to suffer death.

The prisoner was charged before the Session Court of Chingleput with having at Ennore, on the night of the 3rd May, 1850, murdered one Bubu, widow of the prosecutor's paternal uncle, thrown her into a well, and stolen from her certain ornaments valued at Rupees 19.

3rd July, 1850.
The case of Munlyan,
alias Munisami.

The prisoner pleaded not guilty.

It appeared that the prisoner and the deceased were both in the service of Mr. D. Mackenzie of Madras, and having accompanied that gentleman's family to Ennore, on the 1st of May, 1850, on the night the murder was committed, had both gone to sleep in the verandah of a vacant bungalow belonging to Messrs. Line and Co., of Madras, adjacent to their master's.

On the following morning the deceased was missed, and the prisoner informed a gardener in charge of the bungalow, in which they had slept, that during the night a man had come from Madras, and had taken Bubu back with him, saying, that a child had died in her house of cholera; no trace of her was found until nine days afterwards; when, the attention of the prisoner's fellow-servants having been drawn to a small well, dilapidated and out of use, near the bungalow in the compound of Messrs. Line and Co., by the stench which issued from it, and the fact of quantities of flies being collected at it, it was examined and the body of Bubu was found in it, with the hands and feet separately tied together with ropes of twigs, and a similar rope round the waist; the body being so swollen and disfigured by decomposition that, although easily recognized and identified, it was impossible to discover the precise cause of death, that is, whether the deceased had been killed by drowning or by violence or otherwise, before being thrown into the well.

Suspicion was attached to the prisoner in consequence of his having been the last person seen with the deceased; and, upon being questioned, he stated that during the night of the 3rd May, (the day that the deceased was last seen alive), she had complained of pain in her stomach, and got up to answer the calls of nature; that he presently heard the noise of her falling into the well, and on going to it observed the water disturbed; and thinking he might be blamed for what had occurred, collected, and threw into the well, leaves and rubbish, and told an untrue story the next morning to the gardener regarding the deceased, from fear.

The prisoner added that he had appropriated to himself certain ornaments which he had found in the verandah where the deceased had been lying, and had pledged them with one Vengammai,

3rd July, 1860.
The case of Munlyan,
alias Munisami.

by whom they were delivered up to the Police, and were identified as having belonged to the deceased.

The prisoner repeated the foregoing statement before the Head of Police, and before the Principal Sudr Ameen admitted the correctness of his Police depositions.

On the trial he stated with reference to his previous deposition that he could prove by the evidence of certain of his fellow-servants that the deceased had been ailing and complaining for some time previous to her death, and had asked the butler for leave of absence; but the witnesses named by him, denied the truth of this statement, and declared, that as far as they knew, the deceased had been in perfect health, up to the time of her death.

The Law Officer convicted the prisoner of the murder of the deceased upon strong presumptive evidence, and the Session Judge, (W. A. D. Inglis), concurring in the *Fatwa*, recommended that he should be sentenced to suffer death.

In his letter referring the trial for the final sentence of the Foujdaree Udalt, the Session Judge observed, that the fact of the deceased having been found in the well with her hands and feet bound, was incompatible with any supposition of her having thrown herself in, or fallen in by accident; and that the prisoner's admission, that he made no attempt to rescue her, which, from the shallowness of the well, he might easily have done, while, on the contrary, he threw in rubbish and leaves over her, was, coupled with the other circumstances of the case, conclusive to his guilt.

The Court of Foujdaree Udalt (present E. P. Thompson and W. A. Morehead), concurred in the prisoner's conviction and sentenced him to be hanged.

KRISHNAMMAL,

Versus

GOVINDA ROW.

Charge—*Murder and Robbery.*

16th August, 1860.
Govinda Row's case.

The prisoner in this
case charged with mur-

The prisoner was tried before the Session Judge of Coimbatore, upon an indictment charging him with having, at about one o'clock P. M.

16th August, 1850.
Govinda Row's case.

der and convicted by the Session Judge, was acquitted by the Court of Foujdaree Udalut on the ground that the evidence adduced in proof of the several circumstances, which were considered to lead to the presumption of the guilt of the accused, was defective and contradictory.

The Court observed on the omission of the Police to submit the body to the inspection of the European Medical Officer who resided within a short distance of the place where the murder was committed.

The Court also noticed the omission of the Session Judge to call upon the prisoner to plead to certain additional evidence, which after the trial had been referred, had been taken under the orders of the Foujdaree Udalut and the uselessness of the plan sent up by the Head of Police.

on the 1st May, 1850, murdered the prosecutrix's younger sister, Tulasibāyammāl, by stabbing her with a dagger, with having stript her of jewels, valued at Rupees 25, and with having thrown the corpse into a well in the neighbourhood of Coimbatore, and buried the jewels in question in the back yard of the house of one Lachi, who was examined as 1st witness in the case.

The prisoner pleaded not guilty.

It appears that the deceased was missed on the evening of the day that the murder is supposed to have been committed, and that on the following morning her absence was reported by her relatives to the Head of Police, who sent Peons to search the wells in the neighbourhood of Coimbatore, which resulted in the discovery of her body, on the same morning, in a well, within the limits of the village of Komarapalayam, with several wounds on it.

Upon the Head of Police repairing to the well in question and examining the body of the deceased, information was given him, (whether by the 5th or by the 19th witness

docs not clearly appear,) which led to the apprehension of the prisoner, who was stated by those witnesses to have been seen by them respectively in the neighbourhood of the well, at about one o'clock of the day upon which the deceased was missed.

The prisoner's house immediately after his apprehension was searched by the Head of Police, when a dagger was found in it, with which it was supposed that the murder had been committed.

A brahminical thread, which appeared to have been snapped in two and tied together again, was found upon the prisoner's person, and a cloth with spots of blood on it was discovered in his house, and also a green umbrella; which latter circumstance was subsequently adduced as a proof of his identity with a person who had been seen by five persons in the neighbourhood of the well in company with a woman and a girl on the previous day.

The prisoner attempted to account for the bloody marks on the

15th August, 1850.
Govinda Row's case.

cloth, by stating that his wife, who was in her monthly courses, had slept on it on the previous night.

Orders having been issued on the same day to the Monigars of the village of Komarapalayam, to institute further inquiries regarding the murder, it appears that three persons (the 2nd, 3rd and 4th witnesses) who had been watching sheep in the neighbourhood of the well on the previous day, informed the Monigar of their having seen the 1st witness Lachi, a sweeper-woman in the prosecutrix's house, in company with the prisoner and a child at the well in which the body was found.

These persons stated that they saw the prisoner, the 1st witness, and the child, descend into the well together; that they remained in it for about three quarters of an hour, at the expiration of which time the prisoner and the 1st witness came up the bank without the child, whom the witnesses did not see afterwards, and went away in different directions.

They described the prisoner as having had a green umbrella in his hand, and a silver ring on his ankle; both which articles had been found in the possession of the prisoner when his house was searched.

Upon their information the 1st witness Lachi was taken into custody, when she confessed having been present at the commission of the murder of the deceased, which she alleged had been perpetrated by the prisoner, with whom she had recently been engaged in a criminal intrigue, and who, she stated, on the day in question, had requested her to decoy the wife of the 15th witness Guru Row, and the deceased, to a neighbouring Pagoda; that she had accordingly called to them to accompany her; that Guru Row's wife refused, but the deceased went with her; that she (witness) took her to the prisoner, who was standing near and who led her to the well, down the brink of which he dragged her and stabbed her with his dagger on the chin; that immediately on his stabbing the deceased, she, (witness,) ran up the bank of the well and returned to her house, where the prisoner in the evening brought some jewels belonging to the deceased, which he buried in her back yard; stating that he had killed the deceased, and that he would leave the jewels with her, until he could pro-

16th August, 1850.
Govinda Row's case.

cure a sum of three Rupees, which he had promised her as a reward for her assistance in the matter.

This witness stated that the prisoner had murdered the deceased, under the impression that she was the wife of Guru Row, with whom he had had a quarrel on account of a dancing girl.

The prisoner and Lachi having been committed to the Criminal Court, the Principal Sudr Ameen considering that the evidence, as it then stood, would be insufficient for the conviction of either prisoner, recommended that that the 2nd prisoner should be admitted as an approver; which having been granted by the Court of Foujdaree Udalut, she was examined as a witness by the Criminal and Session Courts, and deposed upon oath to the circumstances stated in her confession before the Police. .

The jewels found in the 1st witness's house were identified as having belonged to the deceased; and besides the three persons, who stated that they had seen the prisoner with the 1st witness and a girl descend the bank of the well on the previous day, two boys (5th and 6th witnesses) deposed that they had also been near the well and had seen the prisoner and the 1st witness there, and that the former threw stones at them, and drove them away; one of the boys likewise stating that he had observed a Brahmin girl standing on the bank of the well with the accused.

The evidence of the wife of Guru Row, who deposed to the 1st witness having enticed the deceased from her house, and having asked her to accompany them, which she had refused to do, and to her having at that time seen the prisoner near the house in which she and the deceased lived, with the evidence of Guru Row and the dancing girl to the quarrel which had occurred between him and the prisoner, closed the case for the prosecution.

The prisoner in his defence alleged that the charge had been got up against him by the Head of Police who, he asserted, bore enmity towards him.

The Session Judge (T. B. Roupell) in concurrence with the Mahomedan Law Officer considered the evidence to be conclusive to the prisoner's guilt, and referred the trial for the final judgment of the Foujdaree Udalut, with a recommendation that he should be sentenced to suffer death.

15th August, 1880.
Govinda Row's case.

On perusing the record the Court of Foujdaree Udalut (present G. S. Hooper and W. A. Morehead), considered that the evidence to the circumstances which led to the apprehension of the prisoner was defective, and adverting to the fact that the prisoner, when before the Police, had denied the existence of any intimacy between himself and the 1st witness, the Court deemed it necessary that the truth of her assertion, that she was kept by the prisoner, should be tested by the examination of witnesses competent to depose upon this point.

The Session Judge was accordingly directed to take further evidence upon the points adverted to; and ten additional witnesses were accordingly examined; among whom were the Head of Police, the Duffadar who took the prisoner into custody, one Krishnan who was said to have met the prisoner alone in the neighbourhood of the well on the previous day, and certain witnesses named by the 1st witness Lachi, to prove her alleged intimacy with the prisoner, of which however they denied all knowledge when examined by the Session Judge.

On perusal of the additional depositions submitted for their consideration, the Court of Foujdaree Udalut were unable to concur with the Session Judge in considering the evidence sufficient for the full conviction of the accused.

They considered the alleged identification of the prisoner by the 2nd, 3rd and 4th witnesses, as the person stated to have been seen by them at the well in company with the 1st witness and the deceased, on the day that the murder was supposed to have taken place, to have been by no means satisfactorily established.

The Court were unable to reconcile the alleged distinct recognition by these witnesses of the prisoner's person, with their denial of having heard any screams, which, if the 1st witness's statement in regard to the manner of the commission of the murder was correct, must have proceeded from the well, while the perpetration of the murder was going on.

The Court also remarked that these witnesses deposed to having observed a silver ring on the leg of the prisoner, when walking on the bank of the well; a circumstance they could scarcely have noticed at a distance of two hundred yards, which distance the

15th August, 1850.
Govinda Row's case.

well was stated to be from the spot where they were standing, when the circumstances narrated by them came under their observation.

The statement of these witnesses, that the prisoner had an umbrella in his hand upon the occasion in question, the Court observed was contradicted by the evidence of Krishuan, one of the witnesses examined in the course of the second investigation held by the Session Judge.

This witness deposed that he had met the prisoner alone on the day in question in the neighbourhood of the well, at about the time that he was said to have been seen there by the 2nd, 3rd and 4th witnesses ; and on being asked whether the prisoner was carrying an umbrella, replied that he did not notice his having such an article in his hand.

The evidence of the 2nd, 3rd and 4th witnesses was moreover inconsistent with that of the 1st witness, who stated that she ran up the bank of the well, and returned to her house, immediately after the prisoner struck the first blow upon the chin of the deceased ; whereas the 2nd, 3rd and 4th witnesses deposed that the man and woman, who were seen by them to go down the bank of the well, re-ascended it together, three quarters of an hour after they went down.

On this point the Court observed that the Session Judge's examination was defective ; many obvious questions having been omitted, which might have reconciled the discrepancies under remark.

In the opinion of the Court, it was clearly most important to ascertain how long the 1st witness remained in the well, and with the view of reconciling the manifest inconsistencies between her statement and those of the 2nd, 3rd and 4th witnesses, she should have been subjected to a most searching cross-examination.

The Court declared that, to the evidence of the Head of Police they could attach no credit whatever. It appeared to them to evince an evident desire on the part of that Officer, to fix the crime upon the prisoner ; and it contained contradictions, which, the Court observed, should have been sifted by cross-examination ; many of which, however, seemed to have entirely escaped the notice of the Session Judge. As a proof of the careless manner in which this witness hazarded assertions, which he must have known to be incorrect, the Court particularly referred to his answers to

15th August, 1850.
Govinda Row's case.

the 27th and 28th questions, in the former of which he stated that he had carefully compared the dagger discovered in the prisoner's house with the wounds found on the corpse of the deceased ; while in the latter, when pressed to declare the truth, he admitted that the dagger had not been brought near the body, but stated that he had measured the wounds and afterwards found that the dagger corresponded with them.

* The Court were unable to gather from the evidence of the Head of Police *who* was the first person who indicated the prisoner, as the probable perpetrator of the murder which had been committed. It was to be inferred that it was the 19th witness, but on this point, which they considered, might have been cleared up by a more searching examination, the Court were left entirely to conjecture ; as also in regard to the nature of the statement made to the Head of Police by the 19th witness, when the body was discovered ; the witness in question having stated that he had informed the Head of Police of his having met the prisoner near the well on the previous day ; while the Head of Police represented the communication made to him by this witness regarding the prisoner to have been altogether to a different effect, and denied that he had mentioned to him having met the prisoner near the well ; under which circumstances, the Court observed, that the further examination of the 19th witness was clearly requisite.

Their remarks on the insufficiency of the examination, the Court observed, were likewise applicable to the evidence of the 14th witness, the wife of Guru Row, who deposed to the 1st witness Lachi, on the day the deceased was missed, having requested her and the deceased to accompany her to a tank, the prisoner being close by at the time ; but who had not been questioned as to her reasons for omitting, when the child was missed, to mention the circumstance in question ; of which it appeared that she had given no information until after the apprehension of the prisoner and the 1st witness.

The foregoing discrepancies and omissions in the evidence for the prosecution having thus vitiated the proof of the several circumstances, which were considered by the Session Judge to point to the prisoner as the perpetrator of the crime, the Court of Foujdaree Udalt acquitted the prisoner of the crime charged ; but con-

15th August, 1850.

Govinda Row's case.

sidering that suspicion attached to him, directed that he should be required to find two sureties in fifty Rupees each surety for his good behaviour and appearance when required within three years, and that in default thereof he should be detained for three years in confinement.

Adverting to the rule laid down in the Circular Order, dated the 27th December, 1815, that in all cases of murder, in which it may be practicable, the body should be submitted to the inspection of an European Medical Officer or of a Dresser, the Court remarked that in this case, in which it was obviously important to ascertain whether the wounds discovered upon the corpse were such, as the dagger found in the prisoner's house was likely to have occasioned, the description of the wounds being far from satisfactory, and the body having been found near Coimbatore, the Zillah Surgeon should have been called upon to inspect it.

The Court likewise observed that the prisoner should have been called upon to plead in answer to the further evidence taken under the orders of the Foujdaree Udalut; and they directed that the attention of the Magistrate should be drawn to the plan sent up by the Head of Police of the place where the murder was alleged to have been committed, which, they observed, was utterly useless for the purpose for which it was required; the relative distances of the several spots entered in it, which should have been ascertained by actual measurement, as for instance, the distance from the spot where the 2nd, 3rd and 4th witnesses alleged that they had been standing, to the bank of the well in which the dead body was found, not having been stated.

KEY TO THE INDEX.

Abortion, Procuring of.
Abuse of official authority.
Accessaries.
Accomplices.
Acquittals.
Acts.
Additional Judge.
Administering Drugs.
Adult. •
Adultery.
Aggravation.
Appellate Court.
Approvers.
Arraignment.
Arson.
Assault.
Attempt at Murder.
Cattle Stealing.
Child Murder.
Circumstantial Evidence.
Committing Officer.
Confessions.
Conspiracy.
Corpus Delicti.
Culpable Homicide.
Damages. •
Defence.
Deposition.
Escape from Custody.
Evidence.
Executions.
Exposure.
Extra Judicial Confession.
Forgery.

Futwa.
Gang Robbery by open violence.
Highway Robbery.
House-breaking.
Husband and Wife.
Indictment.
Inquest.
Insanity.
Kidnapping. •
Magistrate.
Medical Officer.
Murder.
Pardon.
Perjury.
Plan.
Police.
Presumptive Evidence.
Principal Sudr Ameen.
Rape. •
Receiving.
Reference of Trial.
Resistance to Process.
Security.
Session Court.
Snatching.
Sorcery.
Stolen Property.
Sub Criminal Court.
Suttee.
Theft.
Thuggee.
Transportation, returning from.
Treason. •

INDEX.

No.

Page.

Abortion, procuring of.

Prisoners charged with having attempted to procure abortion, the 1st in having taken certain medicine, and the 2nd in having caused the 1st to take the said medicine with that intent, acquitted by the Foujdaree Udalt, the Court considering the charge to have been fabricated.—Chinna Bidda and another, case of - - - - - 6

Abuse of Authority.

A Police peon charged with abuse of authority and murder, in having kept two prisoners under his custody with their arms tied behind their backs for a whole night, and a part of the following day, and thereby occasioned the death of one of them, and the loss of the right arm of the other by mortification, was convicted by the Court of Foujdaree Udalt of "gross abuse of authority," and sentenced to receive 20 stripes with a rattan and to five years' imprisonment with hard labor in irons; and orders were issued for the public promulgation of the sentence in the District in which the offence had been committed.—Cuppi Nayakan, case of - - - - - 9

Accessaries.

1. In this case the 3rd prisoner was convicted as an accessory to the crime of murder, upon his confession made before the Criminal Court, that he was present when the murder charged was committed, corroborated by the delivery by the other prisoners of clothes which were identified as belonging to the deceased, and by evidence that the deceased was last seen in the company of the three prisoners charged; the bodies not having been found. The 3rd prisoner was sentenced to 14 years' imprisonment with hard labor in irons.—Timma and others, case of - - - - - 29
2. Prisoner convicted of having been accessory to the administration of a poisonous drug to a peon, in whose custody he was working as a convict, in the absence of any proof of an intent to kill, was sentenced to 14 years' imprisonment with hard labor in irons.—Venkatachalam, case of - - - 157
3. The provisions of Act XIX. of 1837, declared inapplicable to "supposed accessaries" in regard to whom the provisions of Section XX. Regulation VIII. of 1802, are still in force.—Pallyil Ittiraricha Menon and others, case of - - - - - 159

No.		Page.
4.	The provisions of Section XVII. Regulation VIII. of 1802, held to be applicable to accessaries as well as to accomplices, and the 1st, 2nd and 5th prisoners in this case convicted as accessaries, both before and after the fact, to the commission of the crime of thuggee, were sentenced to suffer death.—Banduda and others, case of - - - - -	169
5.	The 4th and 5th prisoners in this case convicted as accessaries after the fact of the crime of murder, in having aided the 1st prisoner in secreting the dead body of the deceased, were sentenced to two years' imprisonment, with hard labor in irons.—Sangan and others, case of - - -	76

Accomplices.

To entitle the evidence of an accomplice to credit, confirmation is required upon some point affecting the <i>person</i> of the prisoner or prisoners charged, as well as in regard to the manner in which the crime was committed.—Pallyil Ittiraricha Menon and others, case of - - - - -	159
---	-----

Acquittal.

1. An acquittal on a trial for forgery does not give validity to an alleged forged document.—Shamu Ayangar, case of - - - - -	32
2. It was decided in this case that the provisions of Clause second, Section XV. Regulation VII. of 1802, precluded the Court of Foujdaree Udaltut from interfering with a verdict of acquittal recorded by a Circuit Judge in concurrence with his Mahomedan Law Officer, although the trial had been referred for the final judgment of the Foujdaree Udaltut regarding the prisoners so acquitted.—Kota Ramudu and others, case of - - - - -	138
3. A Futwah of Thomut is tantamount to a Futwa of Acquittal, and in all cases in which such a Futwa may be delivered, and a Session Judge may consider the evidence sufficient for conviction, he is bound to refer the trial for the final judgment of the Foujdaree Udaltut, under Section XXII. Regulation VII. of 1802.—Inyasi Muttu Shapulan's case - - -	188

Acts.

The provisions of Act XIX. of 1837, refer solely to the evidence of persons convicted of offences, and not to "supposed accessaries," in regard to whom the provisions of Section XX. Regulation VIII. of 1802, are still in force.—Pallyil Ittiraricha Menon and others, case of - - -	159
---	-----

Additional Judge.

Additional Judge appointed to the Court of Foujdaree Udaltut, under the provisions of Section IV. Regulation III. of 1825.—Ramadattan and others, case of - - - - -	195
---	-----

No.

Page.

Administering Drugs.

1. Prisoners convicted of administering intoxicating drugs with intent to rob, sentenced to transportation for life.—Chinnatambu and another, case of 166
2. Vide Culpable Homicide, No. 3.

Adult.

With reference to the provisions of Clause second, Section III. Regulation XV. of 1803, it was ruled in this case that the liability of a person to punishment for the commission of a crime is not to be measured so much by age, as by the strength of the delinquent's understanding and judgment.—Rangan and others, case of - - - - - 52

Adultery.

1. Prisoner convicted of wilful murder was sentenced to transportation for life, the consideration of circumstances of alleviation in cases of express murder having been ruled by the Court of Foujdaree Udalut, to be admissible under the provisions of Sections XV. and XVII. Regulation VIII. of 1802, and capital sentence remitted in this case on the ground that the prisoner had reason for believing in the existence of an adulterous intercourse between his wife and the person of whose murder he was convicted, and whom he had found walking in company with his wife when he inflicted on him the wound which caused his death.—Arunachalam's case, - - - - - 113
2. To establish the corpus delicti in a case of adultery, it is sufficient to prove such proximate circumstances as satisfy the legal conviction of the Court that the crime has been committed.—Preface, - - - xxxi

Aggravation.

The fact of several murders having been recently committed in the same part of the country, caused by the superstition which led to the commission of the murder charged in this case, held by the Court of Foujdaree Udalut to be an additional ground for the enforcement upon the principal of the full penalty of the law.—Sangan and others, case of - 76

Appellate Court.

In the event of a Court of Appeal considering that a witness in his examination before the Court of original jurisdiction committed perjury, it is the duty of the superior Court to have the giver of the false deposition brought to trial for perjury.—Padanakaran Bapa, case of - - - 107

Approver.

In this case it was held by the Court of Foujdaree Udalut that no person, to whom the offer of a conditional pardon has been made, should be com-

No.		Page.
	mitted to take his trial on the ground of failure to perform the conditions of such, excepting by order of the Judge of Circuit who may have tried the case.—Kadari Chinna Narasimhadu and others, case of	36
2.	Held by the Court of Foudaree Udalut that the fact of approvers having failed to perform the conditions of a pardon offered to them under Section XX. Regulation VIII. of 1802, does not justify the reference of a trial, in which a Session Judge is by Law competent to pass sentence, for the final judgment of the Foudaree Udalut.—Benda, <i>alias</i> Iyempa, and others, case of	47

Arraignment.

The practice of receiving detailed statements from a prisoner immediately after his arraignment condemned by the Court of Foudaree Udalut.—Biranna and others, case of	124
--	-----

*

Arson.

It is not competent to a Magistrate in a case of arson to order a requisition of security, under the provision of Clause first, Section IV. Regulation II. of 1822, the crime of arson not being punishable on conviction by the Magistracy.—Kuppan and others, case of	239
---	-----

Assault.

1. 2nd Prisoner in this case, tried upon a charge of murder, having been proved to have struck the deceased two blows with a cudgel; but acquitted of having joined in the commission of the murder, was sentenced to one year's imprisonment for the assault.—Pindiki Bisayi and another, case of	155
2. Vide gang-robbery by open violence, No. 8,	204

Attempt at Murder.

The prisoner in this case was convicted of theft from the person, accompanied with an attempt at murder, and was sentenced by the Foudaree Udalut to receive 195 lashes and to be transported for life, under the provisions of Clause second, Section II. Regulation I. of 1825.

The applicability of the above provisions of the law to the offence proved, was discussed by the Judges of the Foudaree Udalut and decided in the affirmative.—Kundappan's case,

93

Cattle Stealing.

The act of an armed gang forcibly robbing a person of his cattle, cannot be considered a case of cattle stealing punishable by the Circuit Judge under the provisions of Clause fourth, Section III. Regulation VI. of 1822,

No.		Page.
	but must be disposed of as a case of robbery by open violence, under Clause fourth, Section IV. Regulation XV. of 1803.—Made Badi's case,	21

Child Murder.

1.	The pressure of want held to be no palliation of the crime of child murder.	
	—Sulabakal's case, - - - - -	132

Circumstantial Evidence.

1.	The danger of founding a conviction upon circumstantial evidence, unless all the circumstances, upon which the presumption of guilt is based, be clearly established, exemplified.—Madiga Poturazu Karra Tippadu and others, case of - - - - -	227
2.	Malicious fabrication of circumstantial evidence.—Preface, - - -	xli
3.	Probative force of the elementary circumstances, which form a chain of circumstantial evidence, depends upon their <i>number, independence, weight</i> and <i>consistency</i> .—Preface, - - - - -	xxix
4.	Rules to be observed in treating cases of circumstantial evidence.—Preface, - - - - -	xxx
5.	The prisoner in this case, charged with murder and convicted by the Session Judge, was acquitted by the Court of Foudarce Udalut, on the ground that the evidence adduced in proof of the several circumstances which were considered to lead to the presumption of the guilt of the accused, was defective and contradictory.—Govinda Row's case, - -	213
6.	Prisoner convicted upon strong circumstantial evidence of the murder of a fellow servant, was sentenced to suffer death.—Muniyan, <i>alias</i> Munisami, case of - - - - -	241

Committing Officer.

A	Committing Officer should not put questions to an accused person requiring him to give an account of himself, without at the same time distinctly informing him that it is optional with him to answer them or not.—Godella Ramudu and others, case of - - - - -	13
---	--	----

Confession.

1.	Confession alleged to have been made before a Police Officer rejected upon the ground that the acts alleged to have been confessed were impossible.—Parayan Chatapan and others, case of - - - - -	20
2.	Two prisoners convicted of the murder of two persons, whose bodies were not found, upon their confessions before the Criminal Court, corroborated by their delivery of clothes, which were identified as belonging to the deceased, and by evidence that the deceased were last seen in their company.	

No.	Page.
3rd prisoner convicted as an accessory upon his confession that he was present when the murder took place, corroborated by the other circumstantial evidence above adverted to.—Timma and others, case of	29
3. A confession of murder made before the Police, corroborated by other evidence, was rejected by the Court of Foujdaree Udalut, on the ground that it had not been read at the trial and that the manner in which it was attested was irregular, the attesting witnesses not having been present when it was delivered.—Sivaga's case,	42
4. A confession made before a Court of Circuit, unsupported by evidence to prove that the crime charged had been committed, is insufficient for conviction.—Muttu and another, case of	49
5. A confession before a Criminal Judge, supported by evidence that the crime charged has been actually committed, is sufficient for conviction.—Vuttupulu Somadu and others, case of	51
6. To give effect to a confession, even where there is no reason to suppose that it has been influenced by fear or otherwise improperly obtained, it is indispensably necessary that there should be presumptive evidence at least, that the crime charged has been actually committed.—Tippadu and others, case of	16
7. Evidence of extra judicial confessions rejected by the Court of Foujdaree Udalut, on the ground of discrepancies.—Velutedata Unni Kutun's case,	96
8. Confessions made by prisoners before a Police Officer, must be read in Court and proved at the trial in order to render them valid as evidence against the accused.—Timma and others, case of	29
9. A confession should be taken as a whole and not in parts.—Gandla Gandadu and others, case of	118
10. The Court of Foujdaree Udalut noticed the omission of the Court of Circuit to read at the trial the declarations made by the prisoner before the Police and Criminal Court, which compelled the Court to throw those statements out of consideration, and remarked that whether or not a prisoner pleaded guilty, it is of the highest importance that his previous declarations should be read and proved at the trial.—Arunachalam's case,	113
11. The 3rd and 4th prisoners in this case were convicted by the Foujdaree Udalut of having been concerned in an attack upon the Talook Treasury at Ellore, and in the murder of two sepoys on guard, and were transported for life; their conviction being based upon confessions made by them before the Acting Magistrate of Masulipatam.	

It subsequently appeared that the above offence had been committed by a gang of Lansee Bhat Dacoits, certain members of which having been admitted as approvers, and examined by the Assistant General Superintendent for the suppression of Thuggee, stated that the attack upon the Ellore Treasury in 1838 had been made by their gang, naming the persons concerned in it, and that besides these none others were present.

No.	Page.
	The statements in question, confirmed by the depositions of other members of the same gang at Patna and Jhansce, were considered to be conclusive to the innocence of the two prisoners transported for that offence, and orders were issued by the Foujdaree Udalt, with the sanction of Government, for the release of the prisoners, one of whom was brought back to Madras, the other having previously died. The survivor stated that he had been induced to make a false confession in consequence of maltreatment at the hands of the peons in whose custody he was kept.—Kota Ramudu and others, case of - - - - - 138
12.	Infirmative hypotheses affecting confessorial evidence described.—Preface, - - - - - xlvii
13.	Vide Insanity, No. 2.

Conspiracy.

1.	Two prisoners convicted of having conspired to loose upon the prosecutor a venomous snake, with intent thereby to cause his death, were sentenced by the Court of Foujdaree Udalt to imprisonment with hard labor in irons, for the respective periods of ten and seven years, the trial having been referred to the Foujdaree Udalt, under the provisions of Clause seventh, Section II. Regulation X. of 1803, in consequence of the Session Judge considering the punishment he was competent to adjudge under that clause, to be insufficient for the crime of which the 1st prisoner was guilty.—Venkataraman and others, case of - - - - - 190
2.	Sentences passed upon certain persons charged with the crime of conspiracy in having given false evidence, not upon oath, in support of a false complaint, overruled by the Court of Foujdaree Udalt, on the ground that it was illegal; the prisoners not having been the authors or instigators of the false complaint in support of which their false evidence was given.—Ranayi and others, case of - - - - - 236

Corpus Delicti.

1.	Prisoners having confessed a murder before the Police and Criminal Court, but having retracted their confessions before the Court of Circuit, were acquitted by the Court of Foujdaree Udalt, on the ground that there was no proof of the death of the persons with whose murder they were charged.—Nandru Catigadu and others, case of - - - - - 11
2.	Prisoner acquitted on a charge of murder on the ground of insufficiency of the proof of the "corpus delicti," the evidence to the identification of certain remains supposed to be those of the woman with whose murder he was charged, being considered inconclusive, and discrepancies being observed in the evidence to certain extra judicial confessions alleged to have been made by him.—Velutedata Unni Kutan's case, - - - - - 96
3.	Prisoner acquitted of murder by the Court of Foujdaree Udalt, on the ground of the insufficiency of the evidence of the "corpus delicti," not

No.		Page.
	withstanding that the prisoner had voluntarily confessed the crime charged before the Criminal Court, the Court of Foudjaree Udalut under the circumstances of the case attributing the prisoner's statement to insanity.—Pujari Chinna Nayakan and others, case of - - - - -	58
4.	An illustration of the danger of convicting of murder without full proof of the corpus delicti.—Preface, - - - - -	
5.	Vide Confession, No. 6. [¶]	

Culpable Homicide.

1.	Prisoners proved to have killed a proclaimed robber and appropriated to themselves certain articles of property found upon his person, were convicted of culpable homicide and theft, and were sentenced respectively to five years' imprisonment with hard labor in irons.—Gandla Gangadu and others, case of - - - - -	11
2.	Prisoner convicted of having killed the prosecutor's brother by throwing a stone at him was found guilty of culpable homicide, there having been no intent to kill, and was sentenced to three years' imprisonment with hard labor in irons.—Chadu Venkataramudu, case of - - - - -	137
3.	Vide Accessories, No. 2.	
4.	The prisoner was convicted of having killed the prosecutor's brother by striking him on the head with a rice beater, but as it appeared that the fatal blow had been struck in the course of an altercation between the prisoner and the deceased, the prisoner having in his hand at the time the instrument of death, and there being no proof of premeditation or previous malice, the crime proved was pronounced to be culpable homicide, and the prisoner was sentenced to five years' imprisonment with hard labor in irons.—Eralla Cheruman Revi Kalladi's case, - - - - -	4
5.	Prisoner charged with the murder of a man who had intruded at midnight in his house for the purpose, as the prisoner suspected, of criminal intercourse with his wife, was convicted of culpable homicide and sentenced to 14 years' imprisonment.—Pindiki Bisayi and another, case of - - - - -	155

Damages.

The admission by a civil Court of a suit for damages connected with a criminal prosecution, previous to the complete determination of such criminal prosecution, pronounced by the Court of Foudjaree Udalut to be calculated to obstruct the administration of criminal justice.—Chinna Bidda and another, case of - - - - -

Defence.

Whatever a prisoner may have to urge in his defence should be received at the close of the evidence for the prosecution.—Biranna and others, case of 124

No.		Page.
2.	The Court noticed in this case the omission of the Session Judge to call upon the prisoner to plead to certain additional evidence, which, after the trial had been referred, had been taken under the orders of the Foujdaree Udaltut.—Govinda Row's case, - - - - -	243

Deposition.

Ruled that a deposition given before a Criminal Court by a witness who had died previous to the trial before the Circuit Court, must, in order to become legal evidence, be read and proved at the trial as having been given by the person whose deposition it purported to be in the presence of the prisoners; proof of the death of the deponent being likewise adduced.—Timma and others, case of - - - - -	29
--	----

Escape from Custody.

In the case of a prisoner tried upon two charges, the 1st of highway robbery by open violence, and the 2nd of escape from custody after his apprehension on the 1st charge, it was ruled that the two charges should have formed the subject of two separate trials, and that the "escape" having been unattended with aggravating circumstances, which would have brought it under the provisions of Clause fourth, Section V. Regulation VI. of 1822, was cognizable by the Criminal Judge.—Tyakala Nagadu's case, - - - - -	5
--	---

Evidence.

1.	Objections raised by the Mahomedan Law Officers, to the evidence of two Hindu witnesses, as being inadmissible under the Mahomedan Law, overruled by a second question propounded under the provisions of Section VIII. Regulation I. of 1825.—Murtuza's case, - - - - -	1
2.	Objections raised by the Mahomedan Law Officer of the Circuit Court, and by the Law Officers of the Court of Foujdaree Udaltut to three witnesses in a case of murder, on the ground that they had received blows from the prisoners, that one of them was under age, and that they were all females, overruled by the Court of Foujdaree Udaltut by a second question propounded under Clause second, Section II. Regulation I of 1818, and the prisoner sentenced to suffer death.—Ilibari Ramudu's case, - - - - -	3
3.	Prisoners acquitted on a charge of attempting to procure abortion and child murder on the ground that the evidence to the previous pregnancy and actual delivery of the 1st prisoner was defective.—Chinna Biddah and another, case of - - - - -	6
4.	Vide Deposition.	
5.	An objection advanced by a Mahomedan Law Officer to the sufficiency of evidence for conviction, unconnected with the five personal exceptions to the evidence of prosecutors and witnesses enumerated in Clause first,	

No.		Page.
	Section II. Regulation VI. of 1829, cannot be removed by a second question.—Peddapotu Basavigadu's case, - - - - -	44
6.	A prisoner cannot be affected by any evidence which may not have been adduced at his trial.—Muttu and another, case of - - - - -	49
7.	The evidence of the prosecutrix in a case of murder, unsupported by other evidence, held to be insufficient for the conviction of the accused on the ground of discrepancies in her statements.—Murugalan and another, case of - - - - -	84
8.	The reception of the evidence of a child of ten years of age not upon oath condemned, and reference made to the rules regarding the admission of the evidence of persons of a tender age.—Kuppan and another, case of -	129
9.	Vide Accomplices.	

Executions.

1. In consideration of the cold blooded nature of the murder of which the prisoners in this case were convicted, the 1st and 2nd prisoners, the principals in the commission of the murder, were sentenced to be hanged on a gibbet to be erected in the immediate vicinity of the spot where the murders were committed; their bodies to be afterwards suspended in chains.—Timma and others, case of - - - - - 29
2. The Joint Criminal Judge who on receiving the warrant for the execution of the prisoners in this case addressed the Court of Foudarce Udalut, with a view to induce them to mitigate the punishment in the case of the 5th prisoner, was censured for doing so, and also for taking written depositions from the other prisoners on communicating to them their sentence.—Dasi Nayakan and others, case of - - - - - 61
3. Vide Sorcery, No. 2.
4. Six prisoners in this case convicted of the crime of thuggee, were sentenced to be hanged, and a warrant was issued for the suspension of their bodies in chains at the place of execution.—Banduda and others, case of 169

Exposure.

Two prisoners convicted of having exposed a male infant with intent to cause its death were sentenced to imprisonment for the respective periods of eleven and seven years under the provisions of Clause third, Section VII. Regulation XV. of 1803.—Mariyamma and another, case of - 185

Extra-judicial Confession.

Vide Corpus delicti, No. 2.

Forgery.

1. It was ruled by the Court of Foudarce Udalut in a case referred for their final judgment in 1827, that in a trial for forgery the person by whom the alleged forged instrument purports to have been made, is not a competent witness to prove it forged, and should not be examined on the trial.

No

Page.

The rule of the English Law upon which the Court's decision appears to have been based has since been altered by 9 Geo. 4—C. 32—S. 2, and it is now never acted on in the Company's Courts.—Subramanya Pillay, case of, and Note to the same, page 12, - - - - -	11
It is not necessary in a prosecution for forgery to prove the utterance or publication of the instrument alleged to have been forged, if there be other evidence to establish the fraudulent intent.—Shanu Ayangur's case, - - - - -	32
An acquittal of a trial for forgery does not give validity to an alleged forged instrument.—Do. do. do. - - - - -	32
The evidence in this case being considered insufficient for the conviction of the prisoner of forgery, but there appearing sufficient grounds for indicting the prisoner for uttering the forged document, the Court of Foudaree Udalut directed that he should be placed upon his trial for that offence, and issued a Circular Order to the effect that in all cases of forgery whenever there might appear sufficient grounds for charging the prisoner with also uttering the forged document, knowing it to be forged, with intent to defraud, a charge for such uttering should invariably form a second count in the indictment.—Kandali Basavappa's case, - - - - -	167

Futwa.

In this case, in which the prisoners were charged with kidnapping children and selling them to the Khonds for the purpose of being sacrificed as Meriahs, the Mahomedan Law Officers of the Court of Foudaree Udalut were called upon to state by a Futwa to what punishment the prisoners, if convicted of the charge, would be liable under the Mahomedan Law, and having declared them liable to Tazeer-i-shudeed, the prisoners were sentenced respectively to three years' imprisonment with hard labor in irons, and also to corporal punishment, which however was subsequently remitted.—Chakra and another, case of - - - - -	179
A Futwah of Thomut is tantamount to a Futwah of acquittal, and in all cases in which such a Futwah may be delivered and the Session Judge may consider the evidence sufficient for conviction, he is bound to refer the trial for the final judgment of the Foudaree Udalut under Section XXII. Regulation VII. of 1802.—Inyasi Muttu Shapulan, case of - - - - -	188
Vide evidence, No. 2.	
Vide theft, No. 1.	

Gang Robbery by open Violence.

1. Vide Cattle stealing.
2. Vide Indictment, No. 3.
3. The distinction between the offences of "Robbery by open violence" and "Theft" illustrated.—Vuttupulu Somadu and others, case of - - - - - 51
4. Vide Confession, No. 5.
5. Vide Adult.

No.	Page.
6. Vide Confession, No. 11.	
7. Vide Futwa, No. 2.	

The prisoners in this case, who were tried for the crime of gang-robbery by open violence, were convicted by the Court of Foujdaree Udalut, the first ten prisoners of an assault attended with aggravating circumstances, and the remaining four of having been accessory to the commission of the said assault; the Court of Foujdaree Udalut considering, that as robbery was evidently not the object with which the mob went forth to the village where they committed the outrages proved against the prisoners, their offence, although accompanied by the plunder and destruction of property, could not with propriety be viewed as the crime of "Robbery by open violence" as defined by the Regulations.—Vaidamurthyapille and others, case of - - - - - 204

Highway Robbery.

1. Vide Escape from Custody.
2. Vide Confession, No. 6.

House Breaking.

1. Ruled by the Court of Foujdaree Udalut that the provisions of Clause fifth, Section II. Regulation VI. of 1822, preclude the disposal by a Session Judge of any case of burglary or theft unattended with wounding under any other provisions of the Law than Section XXI. Regulation VII., of 1802.—Boyi Kunnigadu's case, - - - - - 220
2. Ruled by the Court of Foujdaree Udalut that it is not competent to a Session Judge to dispose of a case of house breaking and theft unattended by wounding under the provisions of Clause second, Section II. Regulation XV. of 1803; it being incumbent upon him to dispose of all such cases under Section XXI. Regulation VII. of 1822, removing by a further question any objections which may have been stated in the Law Officer's Futwa as a bar to Hind, and subsequently applying to the Foujdaree Udalut for mitigation if the prescribed punishment be considered too severe.—Venganna and others, case of - - - - - 224

Husband and Wife.

1. In a case in which a woman was examined as a witness at the trial of her husband for murder, and ordered by the Circuit Judge to be committed for perjury, the Court of Foujdaree Udalut adverting to the relative position of the witness to the prisoner overruled the order for her commitment for perjury, as being opposed to Circular Orders 4th March 1830, and 31st January 1814.—Pindiki Bisayi and another, case of - - - 155
2. It was ruled by the Court of Foujdaree Udalut in this case, that as a general rule a married female is not punishable for having been concerned in an offence committed by her husband, if the husband have been present

No.

Page

when she did the act charged against her ; unless it clearly appears that she was an active and voluntary offender ; the presumption being that a woman so circumstanced has acted under her husband's coercion.—
Muttan and others, case of - - - - - 202

Indictment.

1. Vide Escape from Custody.
2. Vide Perjury, No. 3.
3. It was ruled in this case in which the prisoners were tried upon two separate indictments charging them with having committed the crime of robbery by open violence in the houses of the two prosecutors situated in the same village, and on the same night, that no necessity existed for the separation of the two cases, the charges being against the same prisoners, being of the same description, and stating the crimes upon which they were founded to have been committed at the same time and place, and the Circuit Judge was referred to the Circular Order of the Foujdaree Udalt of the 26th February 1839, which was declared to be applicable to the case.—Perumal and others, case of - - - 40
4. Vide Forgery, No. 4.
5. Every indictment must state some specific offence, a general charge of having belonged to a gang of robbers or of persons assembled for the commission of any other crime, not being sufficient to justify a person being put on his trial, unless some specific act capable of proof be stated in the indictment.—Timmareddi and others, case of - - - 186.

Inquest.

6. The omission of the Head of Police to hold an inquest upon the body of a person charged to have been murdered by the 1st prisoner in this case, while he was at the time in the vicinity of the place where the murder was said to have been committed, was denounced as being in contravention of Section XXXVI. Regulation XI. of 1811.—Sanara Hari and others, case of - - - - - 22

Insanity.

1. The Court of Foujdaree Udalt remarked in this case that the Circuit Judge having been of opinion that the prisoner was insane when he committed the murder charged against him, and that his appearance before the bar was also indicative of insanity, should not have proceeded with the trial, under Circular Order 1st June 1829.—Yedlapati Siva-ya's case, - - - - - 24
2. The 7th prisoner in this case was convicted by the Circuit Judge of the murder of his father upon his own voluntary confession before the Criminal Court, but was acquitted by the Foujdaree Udalt; that Court considering the evidence insufficient to prove that the prisoner's father was dead, and attributing the statement made by the 7th prisoner to insanity.—Pujari Chinna Nayakan and others, case of - - - 58

Kidnapping.

The prisoners in this case were convicted of kidnapping and selling children to the Khonds, for sacrifice as Meriahs and sentenced by the Foujdaree Udalt to 3 years' imprisonment with hard labor in irons, and also to corporal punishment, which however was subsequently remitted, owing to a delay having occurred in executing the sentence consequent on a correspondence with Government.—Chakra and Riga, case of - - 179

Magistrate.

1. Powers of the Magistracy stated.—Preface, - - - - - xviii.
2. Vide Receiving, No. 2.
3. Do. Arson.
4. Do. Resistance to Process.

Medical Officer.

1. The Court referred in this case to the rule laid down in the Circular Order, dated the 27th December 1815, that in all cases of murder in which it may be practicable, the body should be submitted to the inspection of an European Medical Officer or of a Dresser.—Govinda Row, case of - - - - -
2. An illustration of the utility of such inspection.—Pandaratil Kondi Menon, case of - - - - - 222

Murder.

1. Vide Evidence, No. 2.
2. Do. Committing Officer.
3. Do. Corpus Delicti, No. 1.
4. Do. Confession, No. 1.
5. Do. Insanity, No. 1.
6. Do. Inquest.
7. Do. Confession, No. 2.
8. Do. Approver, No. 1.
9. The prisoner in this case was convicted of the murder of his wife, but in consequence of its being proved on the trial that the deed had been committed in a fit of despair at being deprived of all means of sustenance owing to his dismissal on the same day from his situation as a Jail peon, he having attempted likewise to destroy himself, the extreme penalty of the Law was commuted to transportation for life.—Mahomed Khan's case, - - - - - 57
10. Vide Insanity, No. 2.
11. Four prisoners in this case convicted of a most brutal murder, their guilt of which was brought to light in a most extraordinary manner, in consequence of one of those concerned talking in his sleep, were sentenced to be hanged, the 1st and 3rd at the scene of the murder, and the 4th and 5th at the usual place of execution.—Dasi Nayakan and others, case of - - - - - 61

No.

Page.

12. Vide Sorcery, No. 1.

13. Do. do. No. 2.

14. Do. Evidence, No. 7.

15. Do. Corpus delicti, No. 2.

16. It was decided in this case that under Sections XV. and XVII. Regulation VIII. of 1802, the consideration of "alleviating circumstances" in cases of "express murder" is admissible to justify a mitigation of the capital sentence awardable for the crime of murder, and under this construction of the law, the prisoner, who was convicted of wilful murder, was sentenced to transportation for life; the capital sentence being remitted on the ground that the prisoner had reason to believe the existence of a criminal intrigue between his wife and the deceased, whom he had found walking in company with his wife, when he inflicted on him the wound which caused his death.—Arunachalam's case, - - - - 113

Prisoner convicted of the murder of his wife; but on the ground that the act was not premeditated but was the effect of sudden ungovernable passion, to which he had been excited by his wife's obstinate refusal to return to his house, and by her violent abuse of him, capital punishment was remitted and the prisoner sentenced to transportation for life.—Tirumalai's case, - - - - 131

18. Vide Confession, No. 11.

19. Do. Accessories.

20. The prisoners in this case, charged with having murdered a boy nine years old by cutting his throat with a cockspur, were convicted by the Session Judge and the 1st and 3rd Judges of the Pondicherry Udahut; but the Chief Judge to whom the trial was referred at the instance of the 2nd Judge having concurred with the latter in considering the evidence insufficient for the conviction of the prisoners, and in the opinion that the murder had been perpetrated by two boys originally committed for trial as accessories, but subsequently admitted as approvers, an additional Judge was appointed under Section IV. Regulation III. of 1825, who also concurring in the view of the case adopted by the 2nd Judge, the prisoners were acquitted and released.

The practice of dispensing with the evidence of any witnesses sent up to the Session Court in cases of life and death was declared to be objectionable.—Ramadattan and others, case of - - - - 195

21. Vide Circumstantial Evidence, No. 1.

22. Do. Culpable Homicide, No. 1.

23. Do. do. do. No. 2.

24. Do. do. do. No. 4.

25. Do. do. do. No. 5.

26. Do. Accessories, No. 2.

27. Prisoner convicted of having strangled a female child and roasted her body for the purpose of eating the same; in consideration of the crime having been committed at the worst period of a severe famine and when the pri-

No.		Page.
	soner was in a state of extreme starvation, the prescribed punishment was mitigated to four years' imprisonment.—Chella Akki's case, -	72
28.	The mere fact of a prisoner convicted of the murder of his wife, having suspected her chastity held by the Court of Foujdaree Udalut not to be a sufficient ground for remitting the extreme penalty of the Law.—Lakkavarapu Saradhi, case of - - - - -	211
29.	Vide Circumstantial Evidence, No. 5.	

Pardon.

Vide Approver, No. 1.

Perjury.

1. In this case the Court of Foujdaree Udalut ruled that the fact of a person having been improperly examined as a witness does not exonerate him from being prosecuted for perjury.—Subramanya Pillay's case, - 11
2. The prisoner acquitted of perjury on the ground that no evidence had been adduced to prove that she had been duly sworn before she gave either of the depositions, in one of which the perjury charged against her was alleged to have been committed,—or that the contents of the said depositions had been duly read over to her before she signed them; proof of both which facts is indispensable in a trial for perjury under the provisions of Clause second, Section II. Regulation III. of 1826.—Subbu's case, - - - - - 17
3. Ruled that an indictment for perjury should describe the words spoken by the accused person on which the perjury is supposed to have been committed, the place where, and the time when they were uttered, the judicial proceeding to which the alleged perjury may be material; all which particulars together with the falsehood of the words on which the perjury is charged must be proved on the trial—failure of proof in any one of the points specified in the definition of perjury contained in Section IV. Regulation VII. of 1802, being fatal to a prosecution for that offence.
No person should be prosecuted for perjury, who has not been cautioned against committing himself on his oath, and who has not subsequently persisted in maintaining falsehood for truth.—Peralli Kesadu, case of - 34
4. The sentence awarded by the Court of Circuit to the prisoner in this case was reversed by the Foujdaree Udalut partly on the ground that one of the two contradictory depositions in which the alleged perjury was deemed to have been committed was not material to the issue of any judicial proceeding, the Court of Foujdaree Udalut being of opinion that to bring a case within the scope of the provisions of Clause first, Section II. Regulation III. of 1826, *each* of the contradictory depositions must be, as a matter of fact, material to the issue of the judicial proceeding, in the course of which such deposition is given.

Under the Law above quoted, the contradictory oaths must likewise effect

No.		Page.
	one, and the same judicial proceeding to render a charge of perjury sustainable.—Aryachari's case, - - - - -	73
5.	The Court of Foujdaree Udalut ruled in this case, that a witness swearing falsely on a point material to a judicial proceeding may be convicted of perjury, although such witness may not have been cited to prove the said point; that a witness swearing falsely to the execution of a deed in his presence is guilty of perjury as defined by the Regulations, provided the fact of such execution be material to the issue of a judicial proceeding; and also that the probability of the false statement being taken as proof of the thing deposed to, is not one of the conditions requisite to the completion of the crime of wilful perjury.—Padakaran Bapu, case of - - - - -	107
6.	Vide Appellate Court.	
7.	The Court of Foujdaree Udalut decided in this case that the successor of an Officer before whom perjury may have been committed is clearly competent to institute a prosecution thereon; that under Regulation III. of 1826, to justify a prosecution for perjury the contradiction must be direct and positive, in order to which a party must have given two contradictory depositions in regard to the same matter or matters of fact, but that it is not necessary that the two statements should be contradictory "in set terms."	
	The Court also ruled that under Section XI. Regulation II. of 1811, it "is not material to the issue of" a party's "motion to be released from confinement," that an article concealed by him should be one of value.—Palikandi Mamava, case of - - - - -	110
8.	In this case the indictment upon which the prisoner was placed on his trial for perjury, was pronounced defective, inasmuch as it contained no averment that the alleged perjury was material to the issue of the judicial inquiry, in the course of which it was stated to have been committed.—Bava Sahib's case, - - - - -	126
9.	The Court of Foujdaree Udalut acquitted the prisoner in this case of perjury and subornation of perjury, the authority before whom the alleged perjury was committed having had no legal judicial jurisdiction in the matter in which the supposed false depositions were delivered.—Ramassani Mudali's case, - - - - -	127

Plan.

The Court noticed in this case the uselessness of the plan sent up by the Head of Police of the place where the murder charged was alleged to have been committed; the relative distances of the several spots entered in it, which should have been ascertained by actual measurement, not having been stated.—Govinda Row, case of - - - - -

213

Police.

1. Powers of the Heads of Village Police stated.—Preface,

No.	Page.
2. Powers of Heads of District Police and of Police Ameens.—Preface, -	xviii.
3. Vide Abuse of Authority, No. 1.	

Presumptive Evidence.

Principal species of presumptive evidence described.—Preface, -	xxxiv.
---	--------

Principal Sudr Ameen.

. Vide Subordinate Criminal Court.

Rape.

1. Vide Confession, No. 1.
2. The first prisoner in this case, convicted of rape, was sentenced to seven years' imprisonment with hard labor in irons, and to receive 100 lashes with a cat-o-nine tails. The 2nd prisoner was convicted as an accessory in having inveigled the prosecutor's daughter to his house, to enable the 1st prisoner to accomplish his purpose, and was sentenced to two years' imprisonment with hard labor in irons.—Gherinajerow and another, case of - - - - - 51
3. The Law regarding the crime of rape and that of having sexual intercourse with a female of tender years with her consent discussed.—The same case, Note to, - - - - - 56
4. In a case of rape it was held by the Court of Foujdaree Udalt that the fact of the prisoner not having fully completed his purpose could not be admitted as any palliation of his offence.—Karuttan, *alias* Valapatmachari, and another, case of - - - - - 187

Receiving.

1. Ruled by the Court of Foujdaree Udalt that under the provisions of Clause second, Section IV. Regulation VI. of 1822, and Clause second, Section III. of the same Regulation as amended by Section IX. Regulation I. of 1825, the fact of property stolen having exceeded 300 Rupees renders the receiver of any portion of such property punishable only by the Circuit (Session) Court.—Dudacula Honnurugadu and others, case of - - - - - 135
2. All cases of "receiving stolen property" deemed deserving of a more severe punishment than the Magistracy can inflict under Regulation IX. of 1816, are punishable by the Magistracy under Section VII. Regulation X. of 1816, provided the theft, in the commission of which the property may have been obtained, be punishable under the latter enactment.—Muttanna Chari's case, - - - - - 210
3. The prisoner in this case convicted of "having been privy to the receipt and secreting of stolen property" was sentenced by the Court of Foujdaree Udalt to six months' imprisonment with hard labor in irons un-

No.		Page.
	Under Clause fourth, Section IV. Regulation VI. of 1822.—Inyasi Muttu Shapulan's case, - - - - -	188

Reference of Trial.

Vide Approver, No. 1.

Resistance to Process.

Under the provisions of Clause first, Section XVIII. Regulation IX. of 1816, it is not competent to a Magistrate to issue a proclamation affecting any individual, whose resistance to his process has not been charged upon oath.

Under the same enactment a Magistrate is bound to pass a judgment in a case of resistance to his process and to report the same for the final confirmation of the Foujdaree Udalt; the mere reference of his proceedings for the orders of the Court, without having passed any judgment whatever, being sufficient.—D. G. Gopala Chetti and others, case of - - - - - 25

Security.

Vide Arson.

Session Court.

1. Jurisdiction of.—Preface, - - - - - xxi. & xxii.
2. A Session Judge is not competent to pass sentence under Clause fourth, Section IV. Regulation VI. of 1822, those provisions of the law being applicable only to the Subordinate Criminal Courts.—Inyasi Muttu Shapulan's case, - - - - - 188

Snatching.

Ruled by the Court of Foujdaree Udalt, that all cases of theft or robbery from the person in a town or village should be designated as "Snatching."—Akunuri Gunganna's case, - - - - - 219

Sorcery.

1. In this case, in which some of the prisoners were convicted of certain acts of violence accompanied with murder, their gross ignorance and superstition, and their belief that sorcery had been practised by the persons, upon whom the acts of violence charged in the indictment were committed, added to the fact that murder did not appear to have been premeditated, were admitted in palliation of the offence, and the principal was sentenced to transportation for life, and the other prisoners to imprisonment for various periods.—Chakkamalayata Govinna Menon and others, case of - 66
2. The plea advanced in this case by the 1st prisoner, that his victim had caused by Sorcery the death of certain of his relatives was rejected by

No.

Page

the Court of Foujdaree Udaltut on the ground that the prisoner, wher he committed it, was fully aware of the consequences of the deed; and the 1st prisoner was sentenced to be hanged in chains in the immediate vicinity of the scene of murder, the 3rd prisoner to transportation for life, and the 4th and 5th, convicted as accessaries after the fact, to imprisonment with hard labor in irons.

The fact of several murders having been recently committed in the same part of the country, caused by the superstition which led to the murder charged in this case, was held to be an additional ground for the enforcement upon the principal of the full legal penalty.

It was decided by a majority of the Court of Foujdaree Udaltut, upon a discussion which arose in the case with reference to the practice of sorcery, that the enactment of legislative provisions for punishing that practice was inexpedient, as being calculated to strengthen a belief in its validity, and its influence in the minds of the people.—Sangan and others, case of - - - - - 76

Stolen Property.

Course to be observed by the Committing Officer to ensure the identification of articles of stolen property on the trial of the case.—Banduda and others, case of - - - - - 169

Subordinate Criminal Court.

Jurisdiction of, in the administration of criminal justice.—Preface, - - - xx

Suttee.

In this case, the 1st and 2nd prisoners were convicted of having aided and abetted in the performance of Suttee, and sentenced severally to pay a fine of Rupees 100 commutable to imprisonment for three months under Clause second, Section IV. Regulation I. of 1830, certain extenuating circumstances in their conduct rendering, in the opinion of the Foujdaree Udaltut, the infliction of a severer punishment uncalled for. And the Court of Foujdaree Udaltut advertng to the negligence of the Village Moonsiff and Sayer Gomastha in omitting to send immediate information to the Head of Police of the Suttee which was about to be performed, directed the Magistrate should warn all Heads of Villages and Subordinate Police Officers, that they are required on pain of fine or dismissal to make known immediately to the Head of Police whenever they may be informed that a Suttee is intended.—Gangaraz Cotamraz and others, case of - - - - - 27

Theft.

1. The Court of Foujdaree Udaltut ruled in this case that in all cases of theft, unattended with aggravating circumstances, tried before a Session Judge

No.

Page.

and a Jury or Assessors, the sentence should be passed under the provisions of Section XXI. Regulation VII. of 1802; the fact of a Futwa not being actually delivered in the case, not rendering the offence punishable under any other provisions of the Law.—Thomas' case, . 208

2. Vide House-breaking, No. 1.
3. Do. do. No. 2.
4. Do. Receiving, No. 1.

Thuggee.

The provisions of Section XVII. Regulation VIII. of 1802 held to be applicable to accessaries as well as to accomplices, and the 1st, 2nd and 5th prisoners in this case, convicted as accessaries, both before and after the fact, to the commission of the crime of Thuggee, as well as the 3rd, 4th and 6th who were convicted as principals, were sentenced to suffer death.

The omission of the Assistant General Superintendent for the suppression of Thuggee to conform to the Circular order 16th May 1822, in this case, noticed.

A Thug should in no instance be brought to trial under Act XXX. of 1836, while liable to be indicted for murder.—Banduda and others, case of . 169

Transportation returning from.

The prisoner in this case convicted of having returned from transportation was sentenced to be re-transported, and it was intimated to him, that in the event of his again returning from transportation, he would be sentenced to suffer death.—Raman Catavarayan's case, 27

Treason.

Adverting to a practice observed in the proceedings of the Special Commission appointed for the trial of persons concerned in the Rebellion in Canara in 1837, of receiving detailed statements from the accused immediately after arraignment, the Court of Foujdaree Udalt observed that whatever the prisoners might have to urge in their defence should be received at the close of the evidence for the prosecution, and that in this, as in all other points, the forms of proceeding observed by the ordinary tribunals of Criminal Judicature should be strictly adhered to by the Courts convened under the provisions of Regulation XX. of 1802.—Biranna and others, case of 124

